



Housing Department
Affordable Housing Gap Financing

MULTI-FAMILY UNDERWRITING AND COMPLIANCE MANUAL

As of March 2021

TABLE OF CONTENTS

1	BACKGROUND	8
2	PURPOSE.....	8
3	BASIC ELIGIBILITY.....	8
3.1	Eligible Sponsors	8
3.2	In Good Standing with the City.....	8
3.3	Eligible Uses of Funds	8
3.4	Bond Issuance.....	9
3.5	Demonstration of Minimizing Gap Financing.....	9
3.6	TCAC and CDLAC	9
4	FINANCING OPTIONS AND FEES	9
4.1	Pre-Development Loan.....	9
4.2	Acquisition Loan.....	9
4.3	Construction Loan.....	9
4.4	Permanent Loan.....	10
4.5	Housing Related Fees.....	10
5	LOAN TERMS AND CONDITIONS.....	10
5.1	Loan Repayment	10
5.2	Affordability Restrictions	10
5.3	Subordination of Affordability Restriction.....	10
5.4	Subordination of Deed of Trust	11
5.5	Foreclosure & Loss of Subsidy	11
5.6	Ground Lease	11
5.7	Land Use Entitlements.....	11
5.8	Environmental Reports.....	11
5.9	Assignment of Third-Party Contracts.....	11
6	UNDERWRITING GUIDELINES – DEVELOPMENT	11
6.1	Developer Fee.....	11
6.2	Rent Levels.....	11
6.3	GC Contract.....	11
6.4	Development Cost Savings	12
6.5	Contractor Profit, Overhead, and General Conditions.....	12
6.6	GC Performance and Payment Bonds.....	12
6.7	Change Orders	12
6.8	Disbursements.....	13

6.9	Hard Cost Contingency.....	13
6.10	Soft Cost Contingency	13
6.11	Reasonable Development Costs	13
6.12	Costs Excluded from Development Budget	13
6.13	Section 8 or Rental Subsidy Transition Reserve.....	13
6.14	Capitalized Operating Reserve.....	13
6.15	Rental Income During Construction.....	13
6.16	Project Development Consultant.....	13
6.17	City Construction Inspection Consultant	14
6.18	Prevailing Wage	14
6.19	Other Budget Considerations	14
6.20	Relocation.....	14
7	DEVELOPER FEE POLICY	14
7.1	Eligibility	14
7.2	Purpose.....	15
7.3	Definitions.....	15
7.3.1	Developer Fee	15
7.3.2	Capitalized Developer Fee	15
7.3.3	Deferred Developer Fee.....	15
7.3.4	Contributed Developer Fee.....	15
7.3.5	Excess Developer Fee.....	15
7.4	Developer Fee and Capitalized Developer Fee.....	15
7.4.1	9% credits – New Construction	15
7.4.2	4% credits – New Construction.....	15
7.4.3	4% credits –.....	16
7.4.4	All other projects.....	16
7.5	Deferred Developer Fee	16
7.6	Developer Fee Policy Example.....	16
8	GROUND LEASE POLICY	17
8.1	Eligibility.....	17
8.2	Purpose.....	17
8.3	City/County Acquisition Policy	17
8.4	Effecting Acquisition	17
8.5	Term	17
8.6	Annual Rent.....	17
8.7	Affordability Restrictions	17
8.8	Assignment.....	17

8.9	Title	17
9	PERMITTED EXPENSE AND RESIDUAL RECEIPTS POLICY	18
9.1	Eligibility.....	18
9.2	Purpose	18
9.3	Calculation of Project Gross Receipts	18
9.3.1	Gross Potential Rent	18
9.3.2	Gross Potential Subsidy.....	18
9.3.3	Other Income	18
9.3.4	Vacancy, Collection, Concessions Losses	18
9.3.5	Project Gross Receipts	18
9.4	Project Permitted Expenses.....	18
9.4.1	Administrative Expenses	18
9.4.2	Property Management Fees	18
9.4.3	Salaries and Benefits	18
9.4.4	Repairs and Maintenance	18
9.4.5	Utilities	18
9.4.6	Taxes and Insurance.....	18
9.4.7	Ground Lease	18
9.4.8	Partnership Management and/or Asset Management Fees	19
9.4.9	City Approved Deposits to Reserves	19
9.4.10	City Fees	19
9.4.11	Resident Services Coordination and Supportive Services.....	19
9.4.12	Other Operating Expenses	19
9.4.13	Senior Loan Debt Service	19
9.4.14	Other Debt	19
9.4.15	Project Permitted Expenses	19
9.4.16	Capital Contributions	19
9.5	Permitted Adjustments	19
9.5.1	Purchase of Fixed Assets/ Capital Items	19
9.5.2	Other Adjustments.....	19
9.5.3	Project Permitted Adjustments	20
9.6	Expenses Expressly Not Permitted	20
9.7	Calculation of Net Cash Flow	20
9.8	Residual Receipts Policy.....	20
10	SUBORDINATION AGREEMENT REQUIREMENTS POLICY	20
10.1	Eligibility.....	20
10.2	Purpose.....	21

10.3	Exceptions.....	21
10.4	Subordination Agreement Requirements	21
10.4.1	Policy	21
10.4.2	Right to Cure	21
10.4.3	Reciprocal Standstill.....	21
10.4.4	Remedies.....	21
10.4.5	Limits on Senior Loan Modifications.....	21
10.4.6	Limits on Reps & Warranties.....	21
10.4.7	No Waiver of Funding Requirements.....	21
10.4.8	No Consent to Foreclose	21
10.4.9	Comfort Letters	21
10.4.10	No Waiver of Findings.....	21
10.4.11	No Holding Funds in Trust.....	22
10.4.12	No Subordination to Regulations.....	22
10.4.13	Right to Charge Fees	22
10.4.14	Future Refinancing.....	22
10.4.15	No Waiver of Jury Trial.....	22
10.4.16	No Waivers of Rights.....	22
10.4.17	No Senior Lender Right to Purchase	22
11	SUPPORTIVE HOUSING POLICY.....	22
11.1	Eligibility.....	22
11.2	Purpose.....	23
11.3	Exceptions.....	23
11.4	PSH Development Requirements	23
11.4.1	Section 8 or Subsidy Transition Reserve	23
11.4.2	PSH Design Requirements.....	23
11.5	PSH Property Management Requirements	23
11.5.1	Policy.....	23
11.5.2	Total Operating Costs.....	23
11.5.1	On-Site Management.....	23
11.5.2	Qualifications for Property Managers.....	23
11.5.3	Management Plan.....	24
11.6	PSH Supportive Services Requirements.....	24
11.6.1	Policy	24
11.6.2	Supportive Services Plan and Budget.....	24
11.6.3	Food Services	24
12	RESYNDICATION, REFINANCE, REHABILITATION POLICY.....	24

12.1	Purpose.....	24
12.2	In Good Standing with the City.....	25
12.3	Eligible Projects.....	25
12.4	City Council.....	25
12.5	Consideration.....	25
12.6	Examples of When Policy Applies.....	25
12.7	Project Requirements.....	25
12.8	GC Contracts.....	26
12.9	Developer Fee.....	26
12.10	Rent Burden.....	26
12.11	Affordability Restrictions.....	26
12.12	Bond Redemption.....	26
12.13	Outside Issuer.....	26
12.14	HUD Rider.....	27
12.15	CASH-OUT POLICY.....	27
	Reinvestment in Future Developments.....	27
13	UNDERWRITING GUIDELINES – OPERATIONS.....	28
13.1	Revenue and Operating Expense Inflatos.....	28
13.2	Commercial Space.....	28
13.3	Vacancy Rate.....	28
	Assumptions.....	28
13.4	Total Operating Expenses.....	28
13.5	Reserves.....	28
13.6	Operating Reserve Withdrawals and Replenishment.....	28
13.7	Partnership and Asset Management Fees.....	29
13.8	Resident Services Coordination.....	29
13.9	Supportive Housing.....	29
13.10	Property and Incentive Property Management Fees.....	29
13.11	Senior Loan Debt Service Coverage Ratio.....	29
13.12	Food Services Plan.....	29
13.13	Community Engagement Plan.....	29
14	PROPERTY MANAGEMENT.....	30
14.2	On-Site Property Management.....	30
14.3	Qualifications for Property Managers.....	30
14.4	Management Plan.....	30
14.5	Security Plan.....	30
14.6	Supportive and/or Special Needs Housing.....	30

14.7 Ongoing Compliance..... 30

1 BACKGROUND

The mission of the City of San José’s (City’s) 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 individuals and families with various policies and programs. The primary program administered by the Housing Department is the provision of gap financing for multi-family affordable and permanent supportive housing projects. The underwriting for this program is guided by these general policies and any specific guidelines that may be included in Notices of Funds Available (NOFAs) issued by the Housing Department. Primarily, these guidelines cover gap loans financed with funding from the Low- and Moderate-Income Housing Asset Fund (LMIHAF). However, any specific NOFA will specify terms and conditions applicable to the funding sources being used in that NOFA and may also include any additional requirements specific to funding sources.

These guidelines are authorized pursuant to City Council Resolution No. 79784. Per Section 5.06.230 of the City’s Municipal Code, these Guidelines and others may be developed and issued by the Director of Housing from time to time.

2 PURPOSE

The purpose of this document is to provide developers and other stakeholders with clear and transparent underwriting policies, guidelines, and requirements that drive project financing projections in the very early stages of pre-development. It is intended that this will encourage smooth underwriting and negotiations in further stages of Development, loan approval, and loan closing; however, these guidelines do not contain every term that will apply to each Development. These guidelines may also be supplemented by a Notice of Funding Availability (NOFA), an asset management manual, a recapitalization manual, and a bond manual or policy. The Housing Department’s primary focus is to provide construction and permanent loans for the Development of affordable housing in the City of San José.

3 BASIC ELIGIBILITY

<p>3.1 Eligible Sponsors</p>	<ul style="list-style-type: none"> • At least one sponsor must demonstrate acceptable performance (multifamily housing experience) and financial capacity for the scale of the proposed project regardless of guaranty provisions, if any. All loans require a full Sponsor credit review for final approval. • All transactions that use Low Income Housing Tax Credits (LIHTC) require a developer with a non-profit managing general partner.
<p>3.2 In Good Standing with the City</p>	<ul style="list-style-type: none"> • Any Sponsor that is requesting funding from the City of San José’s Housing Department must assure that all of their current projects are fully compliant with ALL requirements of their current City loan documents; if any • If a Sponsor is not compliant, this may affect the Housing’s department ability to award new funding. The City requires that all projects managed by our sponsors are either brought into substantial compliance, with a plan to be fully compliant, prior to moving forward with any new funding. • Appeals to Non-Compliance: Should a Sponsor choose to appeal any identified non-compliance concerns of the City, the Sponsor will need to provide a letter explaining in detail why the determination of noncompliance is in error and request an appeals meeting with the Director of Housing, or he the Director’s designee, to discuss those claimed errors. Within 30 days of the initial identification of the determination of noncompliance. A decision will be made within 15 Business days and will communicated directly to the Sponsor in writing.
<p>3.3 Eligible Uses of Funds</p>	<ul style="list-style-type: none"> • Pre-development expenses (Generally for City-owned properties) • Acquisition (Generally for City-owned properties) • Rehabilitation/Construction financing • Permanent financing

3 BASIC ELIGIBILITY

3.4 Bond Issuance	<ul style="list-style-type: none"> On projects with tax-exempt bonds, the City is required to be the Issuer. Please see the City’s POLICY FOR THE ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS, Policy Number 1-16, for details. The related parties’ structure is prohibited unless authorized by the City Council. (SEE BOND POLICY PILOT PROGRAM for Related parties)
3.5 Demonstration of Minimizing Gap Financing	<ul style="list-style-type: none"> The City’s gap financing resources are limited, and developer partners are required to aggressively pursue additional other funding sources to both minimize the City’s gap loan as well as to ensure the long-term feasibility of the project. Specifically, developer partners must obtain commercial loans sized with the highest loan-to-value and lowest debt service parameters that are commercially available in the market place as well as demonstrate their efforts to obtain other subordinate loans or grant financing.
3.6 TCAC and CDLAC	<ul style="list-style-type: none"> The City generally adheres to both TCAC and CDLAC regulation requirements for funding. However, if these requirements change, the City reserves the right to maintain its policies, or make changes as deemed appropriate, per its authority under Section 5.06.230 of the municipal code.

4 FINANCING OPTIONS AND FEES

4.1 Pre-Development Loan <i>Amount</i> <i>Term</i> <i>Rate</i> <i>Loan-to-value</i> <i>Security</i>	<p>Maximum of \$1,000,000</p> <p>12 to 24 months, with two six-month extensions</p> <p>Up to 4% simple, accrued interest may be capitalized</p> <p>If property owned by a sponsor or developer, up to 100% total LTV of the City loan plus all senior debt, based on the As-is value of the property</p> <p>Deed of trust (DOT) required if the property owned by the Sponsor or developer; repayment guarantee for all loan amounts over \$250,000 from the project sponsor, and assignment of plans & specifications</p>
4.2 Acquisition Loan <i>Amount</i> <i>Term</i> <i>Rate</i> <i>Loan-to-value</i> <i>Security</i> <i>Other</i>	<p>Based on actual cost and LTV limitations</p> <p>12 to 36 months, with two six-month extensions</p> <p>Up to 4% simple; accrued interest may be capitalized</p> <p>Up to 100% total LTV of the City loan plus all senior debt, based on the As-is value of the property</p> <p>DOT required; may require repayment guarantees from project Sponsor</p> <p>May be required to provide an option to purchase to the City (See Ground Lease Policy)</p>
4.3 Construction Loan <i>Amount</i> <i>Term</i> <i>Rate</i> <i>Security</i>	<p>Up to \$125,000 per unit + prior predevelopment capitalized interest (see Loan Repayment)</p> <p>12 to 36 months, with two six-month extensions</p> <p>Up to 4% simple; accrued interest may be capitalized, up to the committed amount</p> <p>DOT required; completion guaranty from the project sponsor</p>

4 FINANCING OPTIONS AND FEES

<p>4.4 Permanent Loan</p> <p><i>Amount</i></p> <p><i>Term</i></p> <p><i>Rate</i></p> <p><i>Recourse</i></p> <p><i>Security</i></p>	<p>Up to \$125,000 per unit + prior capitalized interest (see Loan Repayment)</p> <p>30-55 years</p> <p>Up to 4% simple</p> <p>Non-recourse to the borrower in the permanent phase</p> <p>DOT required</p>
<p>4.5 Housing Related Fees</p>	<ul style="list-style-type: none"> • City fees are generally set by the City of San José annual budget process, intended to reflect costs incurred and adjusted annually each July. • Current fees are available from the Housing Department contact and may be further outlined in the City’s term sheet – these fees may include the following: <ul style="list-style-type: none"> ○ Loan Origination Fee ○ Loan Conversion Fee ○ Multi-Family Loan Servicing Fee ○ Multi-Family Affordability Restriction Monitoring Fee • Other fees for restructuring, refinancing, payoffs, etc. may also apply.

5 LOAN TERMS AND CONDITIONS

<p>5.1 Loan Repayment</p>	<ul style="list-style-type: none"> • Interest on Predevelopment, Acquisition and Construction Loans may be capitalized if requested before council funding approval. • Please see Permitted Operating Expense and Residual Receipts Policy for the calculation of Residual Receipts for Permanent Loans. • Generally, the City requires 50% of Net Cash Flow (defined here) for Residual Receipts payments. • Prepayment of any City loan is subject to City approval.
<p>5.2 Affordability Restrictions</p>	<ul style="list-style-type: none"> • The City’s affordability level requirements will reflect the policies and regulations of the funding sources used by the City (e.g., LMIHAF, HOME, inclusionary in-lieu fees, etc.) and the NOFA, if any. • Affordability requirements will be documented with a recorded Affordability Restriction (AR) and will not be subordinated to any document with the power of foreclosure (see Ground Lease Policy for policy on the subordination of Leasehold Restrictions) unless it is consistent with the City’s subordination guidelines (see Subordination Agreement Requirements Policy). • Lenders must agree to City form AR, which will include operating and reporting covenants as well as approval rights. • Affordability Restrictions will carry a 55-year minimum term, and the affordability restriction will survive the payoff of any City loans. • HOME restrictions may not be subordinated.
<p>5.3 Subordination of Affordability Restriction</p>	<ul style="list-style-type: none"> • Except where provided above and in the Ground Lease Policy, the City will not subordinate its AR. • In some cases, the City may, in its sole discretion, allow the subordination of the AR, if it is required by a Senior Lender, whose loan product is the only available product that allows financial feasibility; any such subordination must be in a form acceptable to the City (see Subordination Agreement Requirements) and may require City Council Approval.

5 LOAN TERMS AND CONDITIONS

5.4 Subordination of Deed of Trust	<ul style="list-style-type: none"> • If required for feasibility, and in a form acceptable to the City, the City will subordinate its DOT to a senior construction and permanent Loan (see Subordination Agreement Requirements Policy).
5.5 Foreclosure & Loss of Subsidy	<ul style="list-style-type: none"> • At the discretion of the City Council, the City may allow for the float up of the affordability levels to a maximum of 60% AMI, if necessary for feasibility, in such cases where there is a loss of subsidy or foreclosure. Approval of float up language must be granted by City Council. • The City’s float-up language to apply to “New Tenants” in case of foreclosure only.
5.6 Ground Lease	<ul style="list-style-type: none"> • See the Ground Lease Policy for more details • It is the City’s practice to ensure long-term affordability and viability of public funded housing. Therefore, the City may require the borrower to execute an option to purchase subject to a ground lease to the borrower. The ground lease policy applies to new construction ONLY. • The term shall be between 55-99 years. • All other lenders must agree to the form lease, which can be available upon request.
5.7 Land Use Entitlements	<ul style="list-style-type: none"> • For Construction/Permanent Loans, the applicant must demonstrate that the proposed project has all discretionary land use entitlements before the City Council will approve a funding commitment.
5.8 Environmental Reports	<ul style="list-style-type: none"> • For all real estate secured loans, a current Phase 1 ESA for the City’s benefit will be required as a condition of funding (must be dated within 180 days of the closing/recording).
5.9 Assignment of Third-Party Contracts	<ul style="list-style-type: none"> • The City will require an assignment of any third-party contracts such as the construction, architectural plans and specifications, and an assignment of rents, as security for the construction and permanent Loan.

6 UNDERWRITING GUIDELINES – DEVELOPMENT

6.1 Developer Fee	<ul style="list-style-type: none"> • 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 developer’s share of Net Cash Flow.
6.2 Rent Levels	<ul style="list-style-type: none"> • All projects must be Underwritten to comply with City of San José posted rents. These rents are available on the Housing Department’s website. (City of San Jose Rents.)
6.3 GC Contract	<ul style="list-style-type: none"> • GC contracts shall be 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 must be in the most recent AIA form including a clearly defined scope of work, a detailed construction budget, and a schedule acceptable in the 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.

6 UNDERWRITING GUIDELINES – DEVELOPMENT

<p>6.4 Development Cost Savings</p>	<ul style="list-style-type: none"> • Total project cost savings shall be determined in an accounting report prepared by a third-party certified public accountant and shall show all Project Development Costs and Project Sources Income (as defined in the loan documents) through the date of the report, as well as estimated through the Conversion Date and project <i>Form 8609</i> filing with TCAC. • Total project cost savings shall be disbursed first to cover reductions in the tax credit equity contribution, if any, and then to pay interest and principal on the City loan. • The City considers sharing cost savings with other soft lenders that fund during construction and share in construction risk.
<p>6.5 Contractor Profit, Overhead, and General Conditions</p>	<ul style="list-style-type: none"> • As generally consistent with TCAC regulations, the developer should 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) in the City’s proforma. • Contractor profit cannot exceed the following amounts of the total contract (includes demolition, off-site work, site work, structures, general requirements, contractor overhead, contractor profit, prevailing wages, general liability insurance, and performance & payment bond): 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. • Combined contractor overhead and general conditions cannot exceed 8% of the total contract as defined above. • General conditions may not include the purchase of capital items with an expected life of over 12 months. • Contractors’ liability insurance and bonding should be a separate construction budget line and not included in contractor overhead or general requirements. • Consistent with TCAC, contractor profit, general requirements, and contractor overhead cannot total more than 14% of the cost of construction (per TCAC’s calculation as included in City proforma).
<p>6.6 GC Performance and Payment Bonds</p>	<ul style="list-style-type: none"> • The City requires a performance & payment bond from the general contractor for at least the full amount of the proposed contract from a surety approved by the City (and licensed in California with an AM Best rating acceptable to the City). • No exceptions will be granted for any projects that are subject to the Ground Lease Policy. • The City of San Jose must be named as obligee on the bonds, and the bonds must be acceptable to the City in form and substance.
<p>6.7 Change Orders</p>	<ul style="list-style-type: none"> • Copies of all change orders shall be provided to the City, whether positive or negative. • Prior written City approval of any change order must be obtained if: <ul style="list-style-type: none"> ○ the cost of such change exceeds \$25,000 ○ the aggregate amount of all changes exceeds \$75,000 ○ regardless of cost, if such change is a material change in structure, design, function, or exterior appearance of the project ○ regardless of cost, if such change would cause any line item to be increased or decreased by 5% or more, including the hard cost contingency ○ regardless of cost, if such change could delay the completion of the project • General contractor markups on change orders are limited to the percentage of profit allowed in the contract, and subcontractors are limited to a 15% maximum markup on change orders.

6 UNDERWRITING GUIDELINES – DEVELOPMENT

<p>6.8 Disbursements</p>	<ul style="list-style-type: none"> • All requests for disbursements of funds from any lender for and in connection with the Project must be approved by City prior to the disbursement and is a condition of funding. • The originals or copies of all invoices for all construction costs, soft and hard costs, from contractors, subcontractors, and material suppliers to be paid from the proceeds of the requested disbursement, must be dated less than thirty (30) days prior to the date of the disbursement request. Acceptance of older invoices must receive City approval. • Ninety percent (90%) of hard costs will be disbursed, with the remaining to be held as “retention” and one hundred percent (100%) of soft costs per disbursement. • Developer will be required to allow, at least once a month, an on-site construction draw meeting to evaluate the progress and status of the Project construction. • Developer will be required to provide an itemized statement segregating the City funded costs and showing the percentage of construction work completed since the last disbursement, which shall be used as a basis for reviewing disbursement requests. • After receipt of a complete request for disbursement of funds, City shall have ten (10) business days to review and request additional supporting documentation or corrections, if necessary. • Payment for stored materials must be approved by the City in advance of disbursement request.
<p>6.9 Hard Cost Contingency</p>	<ul style="list-style-type: none"> • Minimum 5% contingency of total construction hard cost for new construction developments. • 10% contingency of total construction hard cost for rehabilitation or modular projects. • At the City’s sole discretion, a larger HCC may be required.
<p>6.10 Soft Cost Contingency</p>	<ul style="list-style-type: none"> • Minimum of 3% of the total soft cost budget for all projects. • Soft costs are defined as costs not directly related to the acquisition of land, site improvements, or construction of buildings, but are related to professional work such as architectural & engineering, financing, governmental fees and permits, reserves, etc.
<p>6.11 Reasonable Development Costs</p>	<ul style="list-style-type: none"> • Based on Industry standards, all budgeted Development costs for the following Items: Architecture, survey, engineering, and legal costs, are allowable, and must be reasonable and within industry standards.
<p>6.12 Costs Excluded from Development Budget</p>	<ul style="list-style-type: none"> • The City generally follows TCAC’s exclusions, including the exclusion of nonresidential uses or land allocated for nonresidential uses, unless otherwise required City funding sources. • Design contingencies and allowances may be allowed but are subject to the City’s approval.
<p>6.13 Section 8 or Rental Subsidy Transition Reserve</p>	<ul style="list-style-type: none"> • Will accept if required by Senior Lender or investor, but the calculation methodology will be subject to the City’s approval. • All Reserves must remain with the project when the investor exits the owner entity
<p>6.14 Capitalized Operating Reserve</p>	<ul style="list-style-type: none"> • City policy mirrors TCAC’s guideline of a minimum of three months of OERDS (operating expenses, reserves, and debt service) • May be higher if required by the investor or lender • All Reserves must remain with the project when the investor exits the owner entity
<p>6.15 Rental Income During Construction</p>	<ul style="list-style-type: none"> • Net rental income from operations during lease-up prior to conversion to permanent Loan shall be included as a source of construction funds and included in the calculation of project cost savings.
<p>6.16 Project Development Consultant</p>	<ul style="list-style-type: none"> • City policy is generally consistent with the TCAC requirement that development consultant fees associated with project management work are included in the definition of the developer fee.

6 UNDERWRITING GUIDELINES – DEVELOPMENT

<p>6.17 City Construction Inspection Consultant</p>	<ul style="list-style-type: none"> • The City will engage a construction consultant, for the purposes of reviewing construction documents, monitoring construction draws, and monthly reporting on the progress of construction. • The Project shall bear the cost of the City approved consultant which will include monthly inspection fees throughout the construction draw process, and an initial construction closing review.
<p>6.18 Prevailing Wage</p>	<ul style="list-style-type: none"> • Prevailing wage is required by broader City policy and requires a preconstruction meeting for all contractors and payroll submissions with the Office of Equality Assurance (OEA). • City shall require Borrower to obtain clearance from and to coordinate with the Office of Equality Assurance’s Contract Compliance Specialist, prior to and throughout the construction process. • Borrower must make a request to the Housing Department for wage rates to be issued no less than 120 days prior to the date needed. • Borrower shall ensure that the general construction contract contains all City and federal prevailing wage requirements and exhibits, and requires those provisions to be imposed with subcontractors. • Liquidated damages of multiple times the violation amounts shall apply, to be paid from Borrower’s non-Project funds, as defined in City’s Loan Agreement.
<p>6.19 Other Budget Considerations</p>	<ul style="list-style-type: none"> • Reimbursements to the project, such as CDLAC deposits and utility deposits, shall be used to pay other costs in the project budget if identified, 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 Loan
<p>6.20 Relocation</p>	<ul style="list-style-type: none"> • Any proposed development 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. Proof of compliance will be a requirement of City funding commitment. • The Sponsor must provide an assessment of the 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, resumé, and contact information of the proposed qualified relocation consultant. • City may require disclosure of the current occupancy of the project at the time of purchase by the developer, sponsor or any affiliate, and the disclosure of any current complaint, litigation, or settlement. • Prior to the acquisition, rehabilitation, demolition, or construction funding, the City must review and approve a relocation plan • If State or federal laws require the approval of the governing body, the City Council must approve the relocation plan. • The City may also require a “No Relocation” Certificate or an opinion of counsel if the Developer has asserted that the circumstance which require a plan are not present.

DEVELOPER FEE POLICY

7 DEVELOPER FEE POLICY

<p>7.1 Eligibility</p>	<p>All developments seeking City funding in conjunction with the new construction of affordable housing properties will be subject to this policy. 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.</p>
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7 DEVELOPER FEE POLICY

<p>7.2 Purpose</p>	<p>The purpose of this policy is to establish a guideline for the amount of development fees on affordable housing projects with City financing. Developer fees are recognized as a significant part of the income on which affordable housing organizations depend.</p> <p>The California Tax Credit Allocation Committee (TCAC), has established policies 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.</p>
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7.3 Definitions	
<p>7.3.1 Developer Fee</p>	<p>Developer Fee is defined as follows:</p> <p>All funds paid, at any time, as compensation for developing a proposed project. This will include all fees associated with development consulting, processing agents, developer overhead and profit, construction management oversight. If provided by the developer, personal guarantee fees, syndicator consulting fees, and reserves in excess of those customarily required by multi-family housing lenders.</p>
<p>7.3.2 Capitalized Developer Fee</p>	<p>Capitalized Developer Fee: The amount of 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 or final limited partner contribution.</p>
<p>7.3.3 Deferred Developer Fee</p>	<p>Deferred Developer Fee: The amount of Developer Fee payable out of the developer’s portion of Net Cash Flow.</p>
<p>7.3.4 Contributed Developer Fee</p>	<p>Contributed Developer Fee: The amount of payable developer fee that can be contributed by a party other than the developing partnership (e.g., the partnership general partner).</p>
<p>7.3.5 Excess Developer Fee</p>	<p>Excess Developer Fee: The combination of the Deferred Developer Fee and Contributed Developer Fee.</p>

7.4 Developer Fee and Capitalized 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 and as updated from time to time. However, the City reserves the right to further reduce the Developer Fee in its sole discretion.

Project Type	Maximum Developer Fee	
	Capitalized Developer Fee in Project Budget	Project Basis
<p>7.4.1 9% credits – New Construction</p>	<ul style="list-style-type: none"> The maximum allowable Capitalized Developer Fee mirrors TCAC Regulations, which is the lesser of 15% of the project’s unadjusted eligible basis included in the project, or \$2,200,000. The City may require a lower Developer Fee in its sole discretion 	<ul style="list-style-type: none"> Mirrors TCAC Regulations: At the time of application.
<p>7.4.2 4% credits – New Construction</p>	<ul style="list-style-type: none"> The maximum allowable Capitalized Developer fee to be taken during the construction period shall mirror applicable TCAC Regulations, which is currently capped at \$2,500,000, plus any additional allowable fee for additional units, under the TCAC regulations at the time of application; subject to the City’s underwriting and approval. As per TCAC, all fees in excess of 	<ul style="list-style-type: none"> Mirrors TCAC Regulations: At the time of application.

7.4 Developer Fee and Capitalized Developer Fee		
	<p>the Capitalized Developer Fee shall be Deferred Developer Fee or Contributed Developer Fee</p> <ul style="list-style-type: none"> • The City may require a lower Developer Fee in its sole discretion 	
7.4.3 4% credits – Rehabilitation or Acquisition & Rehabilitation	<ul style="list-style-type: none"> • Please Refer to City’s Resyndication, Refinance, Rehabilitation, & Cash-Out Policy. 	N/A
7.4.4 All other projects	<ul style="list-style-type: none"> • 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 rehabbed unit basis: • \$30,000 per unit for the first 20 units • \$20,000 per unit for units 21 through 40 • \$15,000 per unit for units 41 and above 	N/A

7.5 Deferred Developer Fee

Any Deferred Developer Fee shall be paid from the developer’s share of Net Cash Flow (Further defined in the ([Residual Receipts Policy](#))). Any interest on Deferred Developer Fee shall also be payable from the developer’s share of Net Cash Flow.

7.6 Developer Fee Policy Example

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

- Developer Fee included in basis is \$4,000,000
- Capitalized Developer Fee is \$2,500,000
- Excess Developer Fee is \$1,500,000, and is payable through a combination of Deferred Developer Fee and Contributed Developer Fee (amounts to be determined through developer’s tax counsel and/or tax consultants)
- The developer may pay the Deferred Developer Fee out of its share of Net Cash Flow

GROUND LEASE POLICY

8 GROUND LEASE POLICY

8.1 Eligibility	All new construction developments seeking financing from the 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.
8.2 Purpose	The purpose of this policy is to ensure the long-term affordability and viability of publicly funded housing.
8.3 City/County Acquisition Policy	<ul style="list-style-type: none"> • When the Development is seeking funding from both the City and the County, one of the two agencies will hold the ground lease, ensuring long-term affordability. The City of San José will purchase the land if: <ul style="list-style-type: none"> ○ The land was initially owned or financed by the City of San José. ○ The County of Santa Clara has not assisted the developer with acquisition and does not intend to own the land. ○ The City of San Jose has more soft funding in the Development than the County of Santa Clara. ○ The City of San Jose has provided a pre-development loan to the Development before the County of Santa Clara providing any funding.
8.4 Effecting Acquisition	<ul style="list-style-type: none"> • The City’s acquisition loan documents will include an option to purchase the property. The City will purchase the property at least 30 days before construction loan closing. • The ground lease back to the borrower on a City form shall be executed at the time the City exercises the option. • Prior to the recording of the memorandum of lease, the City will record a 60% AMI affordability restriction on the fee, or amend the existing restriction • When the option is exercised, all financing secured against the fee will be re-conveyed and secured against the leasehold • Sponsors are responsible for ensuring that their Senior Lender and investor accept the City’s form lease and AR, which can be found on the Department’s website • Project entitlements will be required prior to the City taking ownership
8.5 Term	<ul style="list-style-type: none"> • Typically, 55 years, but can be extended to coincide with term of permanent debt in connection with true debt test requirements; however, the term may not exceed 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
8.6 Annual Rent	<ul style="list-style-type: none"> • To be specified in Notices of Funding Availability
8.7 Affordability Restrictions	<ul style="list-style-type: none"> • General affordability restrictions at 60% AMI will be documented in an AR recorded against the fee (land) interest • Project-specific leasehold affordability restrictions will be recorded on the leasehold interest and can be subordinated if necessary • HOME restrictions may not be subordinated
8.8 Assignment	<ul style="list-style-type: none"> • Except as provided in the Ground Lease, the Ground Lease may not be assigned without express written approval from the City
8.9 Title	<ul style="list-style-type: none"> • Security for any other loans can only be recorded against the leasehold interest and not fee interest • Lease Riders are only allowed where expressly required by regulations of State or federal agencies and must be negotiated with the City Attorney’s Office and be approved by City Council

PERMITTED EXPENSE AND RESIDUAL RECEIPTS POLICY

9 PERMITTED EXPENSE AND RESIDUAL RECEIPTS POLICY

9.1 Eligibility	All multi-family projects will be subject to this policy, including any new projects as well as projects with existing City funding seeking an amendment, increase, recapitalization, restructure, or refinancing. However, terms of the existing loan documents will continue to apply unless amended.
9.2 Purpose	The objective of this policy is to clearly define permitted expenses and ineligible expenses for the determination of a project's Net Cash Flow and Residual Receipts payments (defined below).

9.3 Calculation of Project Gross Receipts

9.3.1 Gross Potential Rent	<ul style="list-style-type: none"> Rental rate per unit subject to affordability restrictions
9.3.2 Gross Potential Subsidy	<ul style="list-style-type: none"> Section 8, or other rental subsidy income, up to allowable limits (the amount of increment above tenant-paid rent)
9.3.3 Other Income	<ul style="list-style-type: none"> Other income collected from tenants or lessees such as parking, laundry, vending, fees and charges, forfeited deposits, etc.
9.3.4 Vacancy, Collection, Concessions Losses	<ul style="list-style-type: none"> Income lost due to tenants vacating the property and/or tenants defaulting (not paying) their lease payments (negative line item)
9.3.5 Project Gross Receipts	<ul style="list-style-type: none"> The sum of all the above (also referred to as Effective Gross Income or EGI)

9.4 Project Permitted Expenses

Project Permitted Expenses shall mean all reasonable and necessary direct, out-of-pocket expenses and disbursements which sponsor shall pay during the calendar year because of or in connection with the ownership, operation, maintenance of the property as may be approved in writing by the City. Project Permitted Expenses shall not include depreciation, amortization, depletion, and other non-cash expenses, and shall be determined on a cash basis method of accounting. No escalations of expenses shown in the Proforma shall be deemed approved in absence of the City's express written agreement.

9.4.1 Administrative Expenses	<ul style="list-style-type: none"> Marketing/advertising, computers/software licensing, audits, legal, dues/subscriptions, office supplies, telephone/internet, travel/mileage, bank charges/postage and training
9.4.2 Property Management Fees	<ul style="list-style-type: none"> A maximum of \$60 per unit per month for property management and \$10 per unit per month for compliance and accounting fees, but in any event no more than 7% EGI per TCAC regulations, unless excess is paid out of developer's share of Net Cash Flow Property Management Fees will cover services described above and those described in the City-approved management agreement
9.4.3 Salaries and Benefits	<ul style="list-style-type: none"> The cost of the direct part-time and full-time personnel that run the property, outside of the property management fee
9.4.4 Repairs and Maintenance	<ul style="list-style-type: none"> The cost of repairs and maintenance for the property, including grounds, elevator, and trash
9.4.5 Utilities	<ul style="list-style-type: none"> Owner-paid electricity, water, sewer, and gas
9.4.6 Taxes and Insurance	<ul style="list-style-type: none"> Property taxes and property insurance
9.4.7 Ground Lease	<ul style="list-style-type: none"> Must-pay portion of third-party ground lease if applicable and approved by the City

9.4 Project Permitted Expenses	
9.4.8 Partnership Management and/or Asset Management Fees	<ul style="list-style-type: none"> 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 Net Cash Flow The Asset Management fee shall terminate when the limited partner exits the partnership
9.4.9 City Approved Deposits to Reserves	<ul style="list-style-type: none"> City approved deposits into a reserve net of withdrawals used to fund City approved capital or operating items Approved withdrawals from approved reserves shall not be included as income or cash included in the Project Gross Receipts utilized to determine Net Cash Flow; replacement reserve withdrawals are a negative expense Deposits to replenish any operating reserve accounts are not a permitted expense
9.4.10 City Fees	<ul style="list-style-type: none"> 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
9.4.11 Resident Services Coordination and Supportive Services	<ul style="list-style-type: none"> See Resident Services Coordination policy and Supportive Services policy for allowable amounts for tenant services expense for resident services coordination and case management and other supportive services for permanent supportive housing
9.4.12 Other Operating Expenses	<ul style="list-style-type: none"> Expenses particular to the property and/or required by its financing partners should be disclosed in the proforma or approved budget, subject to the City's reasonable approval
9.4.13 Senior Loan Debt Service	<ul style="list-style-type: none"> Must-pay debt service May include trustee fees, bond administration fees, and other financial expenses if applicable and expressly approved by the City as a Project Permitted Expenses
9.4.14 Other Debt	<ul style="list-style-type: none"> Any pre-approved loans, advances or other obligations requiring repayment that are made to the Partnership, including GP and LP loans
9.4.15 Project Permitted Expenses	<ul style="list-style-type: none"> The sum of all expenses listed above and shown in the City's proforma
9.4.16 Capital Contributions	<ul style="list-style-type: none"> During the construction phase, and through 8609, developers will not authorize or allow the General Partner to make capital contributions other than those shown in the Proforma, except after written notice to the City that provides the amount of the contribution, the section of the Partnership Agreement under which the contribution was made, and a statement of reasons that the contribution was required. Additional supporting information may be requested by the City, if deemed necessary.

9.5 Permitted Adjustments	
9.5.1 Purchase of Fixed Assets/ Capital Items	<ul style="list-style-type: none"> The cost of City-approved capital items (paid for from the replacement reserve are deemed permitted expenses (items typically funded by the replacement reserve)
9.5.2 Other Adjustments	<ul style="list-style-type: none"> Expenses such as partnership loans, must be expressly approved by the City as a permitted expense.

9.5 Permitted Adjustments

9.5.3 Project Permitted Adjustments

- The sum of all expenses shown in the proforma and listed above

9.6 Expenses Expressly Not Permitted

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 in excess of policy
- Replenishment of Operating Deficit Reserve
- Deferred Developer Fee payments

9.7 Calculation of Net Cash Flow

Project Gross Receipts, less

Project Permitted Expenses, less

Project Permitted Adjustments =

Net Cash Flow (Net Cash Flow) used to make Residual Receipts payments

9.8 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, in instances where the City is the sole soft lender. However, if there are additional soft lenders, the City may require the total share of Net Cash Flow, for Residual Receipts payments to ALL soft lenders be pro rata to the amount invested by each soft lender, or an equal split amount of net cash flow.

California Department of Housing and Community Development (HCD): Projects that include funding from HCD, the calculation of residual receipts will need to adhere to HCD UMR 8314(a2). The City will not allow for 100% of residual receipts to pay any deferred developer in a PRIORITY to the City.

The City's share of Net Cash Flow shall be applied to repayment of the City's Loan as follows: First, payment of the current and accrued interest on the Note, then payment of the principal on this Note, until such interest and principal are paid in full.

SUBORDINATION AGREEMENT REQUIREMENTS POLICY

10 SUBORDINATION AGREEMENT REQUIREMENTS POLICY

10.1 Eligibility

All new construction developments seeking financing from the 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 as well as projects seeking refinancing or re-syndication. This policy applies to all documents which are intended to amend or override the City's existing loan or restriction terms.

10 SUBORDINATION AGREEMENT REQUIREMENTS POLICY

10.2 Purpose	It is the City’s intent to limit the effect of subordination of its loan documents to the establishment of lien priority and Loan payment priority and not to amend those documents by means of a subordination agreement. Additionally, as a public entity using public funds, the City will not agree to conditions that are inconsistent with funding source requirements or to conditions that unduly impair the City’s rights or remedies.
10.3 Exceptions	An exception may be authorized where it is determined that a particular provision is requested pursuant to an express requirement in an applicable federal or State agency’s statutory or regulatory documents. City Council must approve any exception.

10.4 Subordination Agreement Requirements

10.4.1 Policy	<ul style="list-style-type: none"> • It is the City’s preference that its Affordability Restrictions not be subordinated to senior debt and when the City does not subordinate it may agree to amend its restriction to acknowledge the senior debt and provide for cure rights • Where the City agrees to subordinate, it shall be effected by the City form of subordination. The City may also, at its discretion, negotiate a general form subordination with a specific Lender. Any subordination must be acceptable to the City Attorney and must be consistent with requirements in 12.4.2-12.4.17
10.4.2 Right to Cure	<ul style="list-style-type: none"> • The City shall have the right to cure defaults under the Senior Loan on the same terms as the borrower
10.4.3 Reciprocal Standstill	<ul style="list-style-type: none"> • Any standstill required by the Senior Lender shall be reciprocal
10.4.4 Remedies	<ul style="list-style-type: none"> • Where the City agrees to subordination of its affordability restriction (i.e., under the Ground Lease Policy), the City shall be allowed to pursue its equitable or injunctive remedies under its affordability restriction without regard to any standstill and such enforcement shall not be a default of the Senior Loan
10.4.5 Limits on Senior Loan Modifications	<ul style="list-style-type: none"> • Terms allowing subsequent modifications of the Senior Loan shall be subject to a prohibition on modifications to increase the principal amount (beyond protective advances), to increase the payment amounts, or to increase the interest without written consent from the City.
10.4.6 Limits on Reps & Warranties	<ul style="list-style-type: none"> • The City will not warrant or represent that <ul style="list-style-type: none"> ○ the City “approves” the Senior Lender documents ○ the requirements under the Senior Lender’s documents are the same as the City’s requirements <p>that the Senior Lender’s requirements prevail in the event of a conflict, unless conflict is defined as a situation where the borrower cannot comply with both requirements</p>
10.4.7 No Waiver of Funding Requirements	<ul style="list-style-type: none"> • The City will not agree to waive the requirements of its funding sources
10.4.8 No Consent to Foreclose	<ul style="list-style-type: none"> • The City will agree to a requirement for notice to the Senior Lender, and a reciprocal standstill, but will not agree to obtain consent of the Senior Lender to foreclose on its junior deed of trust
10.4.9 Comfort Letters	<ul style="list-style-type: none"> • The City will provide “comfort” letters regarding the Loan but will not provide estoppels on matters other than the amount of the outstanding Loan and whether City notices of default have been sent
10.4.10 No Waiver of Findings	<ul style="list-style-type: none"> • The City will not agree to waive findings and determinations of bankruptcy court

10.4 Subordination Agreement Requirements	
10.4.11 No Holding Funds in Trust	<ul style="list-style-type: none"> The City will not agree that it holds its funds received in trust for or subject to the consent of the Senior Lender
10.4.12 No Subordination to Regulations	<ul style="list-style-type: none"> The City will not agree to subordinate to regulations, policies, and/or laws except to the extent this is expressly required by adopted pertinent State or federal regulations, the specific documents are attached, and the intended impact of the subordination to those documents is stated
10.4.13 Right to Charge Fees	<ul style="list-style-type: none"> The City will not agree to a limit on the City’s right to charge the fees required under its loan documents, as these fees are established after cost of service review and adoption by the City Council; the City will make its schedule of fees and charges available to senior lenders on request, but will not agree to waive or reduce its rights under the loan documents to repayment and/or fees for service
10.4.14 Future Refinancing	<ul style="list-style-type: none"> Any requirement to extend the terms of the subordination to future refinancing will be subject to the subordination and refinancing limits in the City’s current standard loan agreement <u>terms in Article 3, Financing Agreements</u>. Where the City agrees to subordination of its affordability restriction (i.e., under the Ground Lease Policy) after loan repayment that agreement will not include consent to a requirement to extend the terms of the subordination to future refinancing
10.4.15 No Waiver of Jury Trial	<ul style="list-style-type: none"> The City will not agree to a waiver of jury trial or an attorney fees provision
10.4.16 No Waivers of Rights	<ul style="list-style-type: none"> A subordination may not modify or waive any right that the City may have in a non-lender capacity (e.g., lessor or regulatory)
10.4.17 No Senior Lender Right to Purchase	<ul style="list-style-type: none"> The City will not agree to a Senior Lender right of purchase for any City owned real property

SUPPORTIVE HOUSING POLICY

11 SUPPORTIVE HOUSING POLICY	
11.1 Eligibility	<p>Supportive Housing is an evidence-based housing intervention that combines supportive services and housing that is affordable to families and individuals who are experiencing or have experienced homelessness. All developments that have Supportive Housing set-asides that seek financing from the City will be subject to this policy. This includes both Permanent Supportive Housing (PSH) and Transition In Place (TIP)/ Rapid Re-Housing units.</p> <p>PSH is a type of housing program that provides permanent affordable housing and supportive services to individuals (and their families) who have disabling conditions. There is no limit to the length of stay and housing units are occupied by persons with lease agreements and have access to on-site or off-site services that are flexible, voluntary and individualized in order to assist an individual or family retain their housing, improve their health status, and maximize their ability to live, and, when possible, work in the community. PSH programs are typically prioritized for chronically homeless persons and families or other populations with significant health needs.</p> <p>TIP or RRH Units are intended for individuals and families who have experienced a brief period of homelessness and require a level of supportive services. However, their service needs are substantially less than those of occupants of PSH units.</p>

11 SUPPORTIVE HOUSING POLICY

11.2 Purpose	It is the City’s intent to work collaboratively with its project sponsors and government partners – particularly the Santa Clara County Office of Supportive Housing and the Santa Clara County Housing Authority – to achieve the regional goal of making homelessness in San Jose a rare, brief, and non-recurring circumstance by creating high quality Supportive Housing. The purpose of this policy is to facilitate the Development and operation of high quality Supportive Housing utilizing national best practices and standards.
11.3 Exceptions	An exception may be authorized where it is determined that a particular provision is requested pursuant to an express requirement in an applicable Federal or State agency’s statutory or regulatory documents.

11.4 PSH Development Requirements	
11.4.1 Section 8 or Subsidy Transition Reserve	The City may allow – subject to City’s underwriting – retention of a Section 8 or subsidy transition reserve beyond the maturity of the senior Loan for the term of continuing affordability and services provision that ensures the units will be available to and occupied by homeless or chronically homeless individuals and families for that term.
11.4.2 PSH Design Requirements	The project design for PSH Units shall address the needs of the PSH population this will include space for the provision of supportive services and space for access/distribution of healthy food.

11.5 PSH Property Management Requirements	
11.5.1 Policy	<p>The City acknowledges that property management of Supportive Housing units is distinct from the property management of non-supportive housing, due to the challenges faced by this population. Understanding that many are transitioning from being unsheltered to a new home. Property management of Supportive Housing entails an increased need to coordinate with supportive services and requires the capacity to carry out the following practices:</p> <ul style="list-style-type: none"> • Decrease barriers to entry into being housed • Ensure housing retention • Address the increased wear and tear on the physical asset that may be associated with Supportive Housing • Maintain high levels of communication with stakeholders including neighbors, law enforcement, regulatory agencies, and funders <p>The City expects the Sponsor to enter into a memorandum of understanding or equivalent partnership agreement with the supportive services provider.</p>
7.1.2 Total Operating Costs	The City acknowledges that the cost to manage PSH may be higher than the cost to manage affordable housing units and consider the factors described in Section 13.5.1. above when reviewing operating budgets for PSH units. The City expects the Sponsor to explain the increase in operating costs relative to non-PSH affordable housing.
11.5.1 On-Site Management	Properties with 30% AMI level residents, especially for PSH units, must provide 24/7 staffing coverage. The provision of 24/7 on-site management must be included in the Management Plan described in 13.5.5 below.
11.5.2 Qualifications for Property Managers	The management entity of properties with 30% or more PSH units must demonstrate that three of the five projects have been successful under that specific property management pursuant to Section 8.2 above are PSH projects.

11.5 PSH Property Management Requirements

<p>11.5.3 Management Plan</p>	<p>The management entity of properties with over 30% PSH units must include in their Management Plans, a description of 1) target population to be housed, 2) property staffing including 24/7 on-site staff coverage, 3) tenant selection criteria and tenant screening policies that specify how barriers to entry to housing will be minimized, in compliance with State of California Housing First Model requirements, 4) a plan for coordinating with supportive services provider, 5) emergency and safety protocols, and 6) a plan ensuring staff are trained, including training on property management in PSH, fair housing, and reasonable accommodations, and 7) a plan for the access/distribution of healthy food for residents.</p>
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11.6 PSH Supportive Services Requirements

<p>11.6.1 Policy</p>	<p>The provision of supportive services is a core component of Supportive Housing. The City expects the funding for these services to be paid by a separate source other than project income. The City is working collaboratively with Santa Clara County Office of Supportive Housing as a partner on PSH and TIP projects and, by doing so, coordinate the deployment of the City’s capital financing with County funding for supportive services. Supportive services are distinct from resident services coordination, which may be funded as a property operating expense, as described in Section 7.7 above. The City expects the supportive services provider to enter into a memorandum of understanding or equivalent partnership agreement with the property management entity. The City review and approve such memoranda and reserve the right to enforce the provisions therein.</p>
<p>11.6.2 Supportive Services Plan and Budget</p>	<p>A supportive services plan must be submitted that describes services to be delivered, method of service delivery, expected outcomes, staffing ratios, and staff positions. The Plan will be accompanied by a line item budget that includes sources and uses. The Plan and budget will be submitted with the loan application, with a final plan approved before the construction loan closing.</p>

<p>11.6.3 Food Services</p>	<p>Any project with at least 30% of permanent supportive housing needs to provide a food access plan. The food access plan should address how Development meets the needs of the population being served.</p>
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CITY OF SAN JOSE POLICY RESYNDICATION, REFINANCE, REHABILITATION & CASH-OUT POLICY

12 RESYNDICATION, REFINANCE, REHABILITATION POLICY

<p>12.1 Purpose</p>	<p>The purpose of this Policy is to establish guidelines for how the City will assess requests to Resyndication, Refinancing, and/or the Rehabilitation of Developments where the City has a financial or non-financial interest in the Development. In any of these cases, the City’s Cash-Out Policy will apply.</p>
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12 RESYNDICATION, REFINANCE, REHABILITATION POLICY

<p>12.2 In Good Standing with the City</p>	<ul style="list-style-type: none"> Any Sponsor that is requesting refinancing activities from the City of San José’s Housing Department must assure that all of their current projects are fully compliant with ALL requirements of their current City loan documents; if any A sponsor shall be compliant with the City’s loan documents and restrictions across the Department’s portfolio. The City requires that all projects managed by our sponsors are either brought into substantial compliance, with a plan to be fully compliant prior to moving forward with any application for new financing, resyndication or discretionary approvals for transactional activities. Appeals to Non-Compliance: Should a Sponsor choose to appeal any identified non-compliance concerns of the City, the Sponsor will need to provide a letter explaining in detail why the determination of noncompliance is in error and request an appeals meeting with the Director of Housing, or her the Director’s designee, to discuss those claimed errors. Within 30 days of the initial identification of the determination of noncompliance. A decision will be made within 15 Business days and will communicated directly to the Sponsor in writing. If the manager’s units in the project previously approved by the City are income and affordability restricted, the fact that the manager is over income shall not be considered substantial noncompliance, at the discretion of the City.
<p>12.3 Eligible Projects</p>	<p>This policy will apply to any project currently being managed by the City of San Jose’s Asset Management team, where the City holds a City Loan, a City Grant, City Issued Bond with a Bond Regulatory Agreement, City Affordability Restriction, and City Ground Lease. All Sponsor loans must be in fully compliant in order for the City to consider any refinance or resyndication/rehabilitation projects. An application will be required to be completed for all transactions</p>
<p>12.4 City Council</p>	<p>Staff has a limited authority through the Director’s Delegation of authority Therefore, many requests will have to be brought before City Council for approval. Transactions that require the subordination of the City affordability restriction, cash-out, or material changes to a current loan may require that the request be heard by City Council.</p>
<p>12.5 Consideration</p>	<p>The City expects consideration for all transactions, specifically when there is a request for a transaction that does not meet the requirements of the City’s underwriting guidelines.</p>
<p>12.6 Examples of When Policy Applies</p>	<ul style="list-style-type: none"> The City of San Jose is the Issuer of the Bond City has a Construction, Permanent, or Acquisition Loan There is an Enforceable Bond Regulatory Agreement in place, but there is no longer an outstanding Bond. There is an Enforceable City Affordability Restriction in place, but there is no longer a Construction, Permanent, or Acquisition Loan.
<p>12.7 Project Requirements</p>	<ul style="list-style-type: none"> An acceptable 15- to 20-year capital needs assessment that includes a replacement reserve analysis is required Minimum of \$30,000/unit in hard costs for resyndication projects (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 the property with a useful life of 15 years or less If the relocation of tenants is anticipated, a relocation plan prepared by a qualified consultant is required prior to funding authorization.

12 RESYNDICATION, REFINANCE, REHABILITATION POLICY

<p>12.8 GC Contracts</p>	<ul style="list-style-type: none"> • This City’s Cost Plus, with guaranteed max. price policy applies AIA A102 or similar (Design-Build). • GC contracts under \$250,000 are not subject to the City’s policy of Cost Plus a Fee with a Guaranteed Maximum Price (standard AIA A102), but the construction contract will 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 the 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
<p>12.9 Developer Fee</p>	<ul style="list-style-type: none"> • All developments seeking to rehabilitate and/or resyndicate, that has current City funding, will be subject to this policy. • For such transactional requests, the City will only allow for a Developer fee to be taken that is proportional to the amount of rehabilitation. Developer fee should be both no more than 10% of total construction cost for the rehabilitation and no more than the maximum allowed for new construction.
<p>12.10 Rent Burden</p>	<ul style="list-style-type: none"> • For Developments that are taking on additional debt to the property, the Developer will need to assure that the additional debt that will not cause additional rent burden to its current tenants. • The Developer will need to provide a plan of action that will address “Rent Burden” if any of their current residents are paying 50% or more of their gross income in rent. • The action plan should include, solutions such as: <ul style="list-style-type: none"> ○ Lowering of AMI to meet the income level of current tenants ○ The creation of a rent reserve to help cover rent burdened tenants ○ Property management plan that demonstrates a clear effort to address rent burdened tenants.
<p>12.11 Affordability Restrictions</p>	<ul style="list-style-type: none"> • For request for refinance with cash out or resyndication, the City will require a minimum of an additional 20-year extension of the affordability restriction. Otherwise a shorter restriction extension may be allowed
<p>12.12 Bond Redemption</p>	<p>The City of San José shall be the issuer of all bonds financing for multifamily housing rental projects within the City. Please refer to City Council Policy for Bond Issuances (1-16) for more information about this policy.</p>
<p>12.13 Outside Issuer</p>	<p>In general, the City does not allow for the outside issuance of any multifamily Bond Issuance without City Council approval</p>

12 RESYNDICATION, REFINANCE, REHABILITATION POLICY

12.14 HUD Rider

Where the City loan has been repaid and HUD is requesting a rider that does not subordinate the City's restriction (but contains language overriding City terms that conflict with any HUD policy or term, and which limits the City's monetary remedies to surplus cash), staff may seek Council approval for the rider without requiring a guarantor if either of the following circumstances occur:

- 4.1.1 If the project **(a)** had an original HUD loan in place when the Council approved the City loan or grant; **(b)** the project has continued to be HUD financed since that time and **(c)** the project is seeking a new HUD loan that includes affordability restrictions to be enforced by HUD for the term of the HUD loan.
- 4.1.2 If the project **(a)** had an original HUD loan, project based Section 8 vouchers and a use agreement requiring affordability in place when the Council approved the City loan or grant; **(b)** the project has continued to be HUD financed with project based Section 8 vouchers and a use agreement since that time; and **(c)** at the time the rider is requested, there are still project based vouchers and a use agreement requiring affordability for all rental units which will run for at least 20 years from the recording of the rider.

12.15 CASH-OUT POLICY

In general, The City of San Jose will allow a Sponsor to secure new loans for financing or refinancing the acquisition/rehabilitation of a Project, but only if The City of San Jose determines in its sole discretion, that such financing/refinancing is necessary to ensure the viability of the Project. Under City Documents, a Sponsor must obtain The City of San Jose prior written consent for such new financing/refinancing, encumbrance of a leasehold estate, subordination of any City of San Jose existing liens, and/or prepayment of existing debt. Therefore, to ensure the financial viability and sustainability of a Project, a Sponsor is generally **not permitted** to obtain a loan in an amount that exceeds the amount necessary to acquire/rehabilitate a Project, which is commonly known as a **"Cash Out."**

If Sponsor would like to seek the City's consent in obtaining a new loan for conducting an acquisition/rehabilitation, resyndication or refinancing, and will be taking "cash out", the transaction may be subject to City Council approval and the proceeds will be subject to a split between City and Developer 50/50, with the City's portion being applied to outstanding interest. The project must also meet following criteria:

Cash-Out Requirements:

- 1) The City has performed a satisfactory analysis of the financial health of Developer/Sponsor. 3 years of Audited Financial Statements will be required.
- 2) The Development must be analyzed for rent burdened and this analysis must be reviewed, addressed, and approved by the City (**Please refer to section 9.15**).
- 3) A Physical Needs Assessment must be completed, and approved as satisfactory, by the City of San Jose.

Waiver Type	Cash-Out 50/50 Waiver
<p>Reinvestment in Future Developments</p>	<ul style="list-style-type: none"> • The City of San Jose may consider a waiver to the 50-50 split of "Cash-Out" by allowing the Sponsor to take a greater portion of the Cash-Out, if the Sponsor can demonstrate that Cash-Out proceeds will be used by the Sponsor to invest in future affordable housing developments in the City of San Jose, currently being planned by the Sponsor within the next five years. • Subject to review by the City, the Sponsor will need to provide a copy of all current and proposed developments where the Cash-Out will be used. The Sponsor will also be required to assure that the Cash-Out appears on the audited financials of the Sponsor as a development loan.
<p>Reinvestment in Proposed Development</p>	<ul style="list-style-type: none"> • The City of San Jose may also consider waivers, subject to City of San Jose's review of supporting documentation, that result in an increased net public benefit to the subject property, where a Sponsor commits to re-invest all Excess Proceeds into the development. Such requests must demonstrate that the proposed uses justified by recent Capital Needs Assessments ("CNA") approved by City of San Jose, feasible underwriting, Sponsor capacity,

12 RESYNDICATION, REFINANCE, REHABILITATION POLICY

and long-term cash flow projections.

OPERATIONS AND COMPLIANCE POLICIES

13 UNDERWRITING GUIDELINES – OPERATIONS

13.1 Revenue and Operating Expense Inflat ors	<ul style="list-style-type: none"> • City policy generally mirrors TCAC policy
13.2 Commercial Space	<ul style="list-style-type: none"> • Commercial spaces should be excluded from City 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, and these costs must be listed separately • Only uses that are compatible with the affordable housing project will be allowed. • Leasing to previous commercial tenants, if any, should be considered during the negotiations. • A Master Lease structure is acceptable provided that the leasing is not structured to divert income from the project. • All non-residential leasing shall contain use limitations, and City protections including insurance and indemnity. City funding sources may impose additional requirements
13.3 Vacancy Rate Assumptions	<ul style="list-style-type: none"> • City policy generally mirrors TCAC policy: (5%) for family, seniors, and at-risk proposals, and ten percent (10%) for rapid rehousing, permanent supportive housing, other special needs, and SRO
13.4 Total Operating Expenses	<ul style="list-style-type: none"> • Minimum operating expenses shall be generally consistent with those 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)
13.5 Reserves	<ul style="list-style-type: none"> • New construction = minimum \$250/unit and maximum \$350/unit per annum; may be determined by a 20-year replacement schedule. • New Construction (PSH)= minimum \$350/unit and maximum \$500/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 the creation of additional reserve account due to other financing or additional project requirements • Reserve must remain with the project when the investor exits the owner entity • All disbursements from reserve accounts will require need City approval.
13.6 Operating Reserve Withdrawals and Replenishment	<ul style="list-style-type: none"> • Operating Reserve replenishment (if required by limited partner or TCAC) to be funded from developer’s share of Net Cash Flow (see PERMITTED OPERATING EXPENSE AND RESIDUAL RECEIPTS POLICY)

13 UNDERWRITING GUIDELINES – OPERATIONS

<p>13.7 Partnership and Asset Management Fees</p>	<ul style="list-style-type: none"> • 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 the maximum or accrued fees and interest must be paid from the developer’s share of Net Cash Flow • Only current fees up to the maximum amount are considered a permitted expense • The Asset Management fee shall terminate when the limited partner exits the partnership 										
<p>13.8 Resident Services Coordination</p>	<ul style="list-style-type: none"> • Resident services coordination expenses will be limited to the following AMI: <table border="1" data-bbox="548 562 1383 850"> <thead> <tr> <th>Units Restricted to:</th> <th>Maximum Allowed Per Unit / Per Year</th> </tr> </thead> <tbody> <tr> <td>0 – 30% AMI</td> <td>\$575</td> </tr> <tr> <td>31 – 49% AMI</td> <td>\$475</td> </tr> <tr> <td>50 – 60% AMI</td> <td>\$325</td> </tr> <tr> <td>100% PSH</td> <td>\$600</td> </tr> </tbody> </table> <p>Should the Developer provide in their Services Plan that they will provide an enhanced or increased level of Resident Services, the City will allow for the per unit amount to be negotiated.</p>	Units Restricted to:	Maximum Allowed Per Unit / Per Year	0 – 30% AMI	\$575	31 – 49% AMI	\$475	50 – 60% AMI	\$325	100% PSH	\$600
Units Restricted to:	Maximum Allowed Per Unit / Per Year										
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31 – 49% AMI	\$475										
50 – 60% AMI	\$325										
100% PSH	\$600										
<p>13.9 Supportive Housing</p>	<ul style="list-style-type: none"> • The primary expenses for the delivery of services for permanent supportive housing units shall be paid by a separate funding source other than project income. (see SUPPORTIVE HOUSING POLICY). 										
<p>13.10 Property and Incentive Property Management Fees</p>	<ul style="list-style-type: none"> • Property Management Fees: A maximum of no more than 7% Effective Gross Income (EGI) per TCAC regulations, unless the excess is paid out of the developer’s share of Net Cash Flow. • Escalation will be tied to the annual increases in the AMI • Incentive Property Management Fees may be payable out of developer’s share of Net Cash Flow 										
<p>13.11 Senior Loan Debt Service Coverage Ratio</p>	<ul style="list-style-type: none"> • 1.15x to 1.20x in first stabilized year based on projected eligible income and expenses (pending Senior Lender approval), but in any event no less than 1.00x throughout the compliance period unless the total estimated deficit is covered by reserves, as approved by the City. 										
<p>13.12 Food Services Plan</p>	<ul style="list-style-type: none"> • A plan for access/distribution of healthy food to meet basic food security needs of residents earning 30% AMI or less will be required for projects with PSH units. (See PSH REQUIREMENTS). • A Food Services Plan should be detailed within the Property Management plan that will be required to be submitted to the City for approval. 										
<p>13.13 Community Engagement Plan</p>	<ul style="list-style-type: none"> • All project sponsors are required to develop and implement a community engagement plan to include the followings but not limited to: <ul style="list-style-type: none"> ○ Identify communities with diverse cultural and linguistic needs in various neighborhoods in San Jose; ○ Develop culturally and linguistically relevant communication materials reflective of those communities; ○ Engage with the proposed community, its residents, and surrounding businesses that may be affected by the proposed Development to adequately address their concerns. • Track the engagement progress to report and refine engagement strategies as needed. 										

14 PROPERTY MANAGEMENT

14.2 On-Site Property Management	<ul style="list-style-type: none"> • All projects must include, at a minimum, on-site management staff during normal business hours • The City must approve the property’s management agreement and related documents
14.3 Qualifications for Property Managers	<ul style="list-style-type: none"> • Qualifications of the management entity must be submitted prior to the closing of the City’s construction loan • The proposed management firm, or a principal in the firm, is required to submit evidence of successfully managing at least five projects, each with over ten units and subject to a recorded regulatory agreement for at least three years prior to the loan application
14.4 Management Plan	<ul style="list-style-type: none"> • A draft management plan, lease agreement, and related documents shall be submitted with the loan application, with a final approved prior to construction loan closing • Once approved, neither the management plan nor the lease agreement may be changed without City approval • All management plans must include an affirmative fair housing marketing plan, approved by the City.
14.5 Security Plan	<ul style="list-style-type: none"> • Developers must submit a security assessment and plan for review and approval by the City.
14.6 Supportive and/or Special Needs Housing	<ul style="list-style-type: none"> • Property management for formerly homeless and chronically homeless individuals and families in permanent supportive housing will be managed in accordance with the City’s PSH Policy (See SUPPORTIVE HOUSING POLICY) • Property management for formerly homeless individuals and families in Rapid Re-Housing will be managed in accordance with the City’s Transition in Place Guidelines. • Properties with special needs occupancy will have a plan to address the needs of the population
14.7 Ongoing Compliance	<ul style="list-style-type: none"> • All projects must be maintained in compliance with the City’s standards in the Municipal Code and other standards that may be adopted by the Department and will be inspected by the Housing Department’s inspectors periodically • City staff will conduct compliance reviews of the project annually, or more often if necessary. All projects must comply with the City’s reporting and record keeping requirements • New projects must comply with the City’s monthly lease-up reporting requirements outlined in the City’s loan documents) until the property is placed in service