

**City Of Oakland
Community and Economic Development Agency**

Guidelines for Developer Fees on Housing Development Projects

MAXIMUM DEVELOPER FEE

First 10 units:	\$30,000 per affordable unit
Unit 11 to unit 30:	\$20,000 per affordable unit
Units 31 and above:	\$12,000 per affordable unit

Maximum fee: \$1,300,000

These are maximum allowable fees. The fee for each project is subject to approval by the City of Oakland. Allowable fees for mixed-income projects, minor rehabilitation projects, or rehabilitation of existing affordable housing will be negotiated on a project-by-project basis. If the proposed project includes market-rate units, is an acquisition/rehab or refinance/rehab, please call Housing Development staff as soon as possible prior to submitting your application to discuss the allowable developer fee.

Developer fees are contingent upon satisfactory completion of the project. Where project costs exceed the approved budget, developers may be required to contribute a portion of the developer fee toward the excess costs.

Amount available for developer administration/overhead prior to completion:

The lesser of the following:

- 50% of the total developer fee.
- \$250,000.

SCHEDULE FOR DISBURSEMENTS

The approved total developer fee for the project will be earned based on a schedule agreed upon by the City/Agency and the developer. The following standard schedule of disbursement applies, and is expected to be implemented.

Administration portion (up to a maximum of \$250,000):

1. 50% upon securing firm commitments for all financing and closing City/Agency loan.
2. Additional 50% upon start of construction.

Remainder of development fee:

1. 50%, or the balance of the fee, less a final disbursement of \$200,000 (for cost certification as specified below), upon full occupancy and closing of all permanent financing.

2. 50%, up to a maximum of \$200,000, upon City review and approval of final cost certification. (Please refer to Program Description and Requirements for additional details on the final cost certification process).

The following examples illustrate the disbursement schedule, for purposes of clarity:

	<u>Project A</u>	<u>Project B</u>
	87 Units	12 Units
Total Developer Fee:	\$1,300,000	\$340,000
<u>Administration/Overhead Portion (\$250,000 maximum):</u>	<u>\$250,000</u>	<u>\$170,000</u>
<ul style="list-style-type: none"> • 50% disbursed when all financing is committed and the City/Agency loan has closed • 50% disbursed on start of construction 	\$125,000 \$125,000	\$85,000 \$85,000
<u>Remainder of Development Fee:</u>	<u>\$1,050,000</u>	<u>\$170,000</u>
<ul style="list-style-type: none"> • 50%, or the balance less \$200,000, disbursed upon full occupancy and closing of all permanent financing • 50%, up to a maximum of \$200,000, disbursed upon City/Agency review and approval of final cost certification 	\$850,000 \$200,000	\$85,000 \$85,000

CONTROLLING DISBURSEMENT OF FEES IN COORDINATION WITH OTHER FUNDERS

In the case of fees paid from syndication, the City/Agency will make the payment schedule a condition of approval of the syndication. In those cases where developer fees are funded by other lenders, the City/Agency may need to negotiate an "Inter-Creditor Agreement" or other similar agreement with the other lender or the investor to ensure that the above schedule is followed.

The applicant is required to provide the City/Agency disbursement schedule to all other funding sources. Subsequently, the City/Agency will assume that other funding sources are aware of the disbursement requirements, and that the preceding disbursement schedule will be implemented and followed, unless an "Inter-Creditor Agreement" has been finalized.

The City/Agency will hold an amount of its funds equal to the final developer fee payment until the final project cost certification is reviewed and approved, unless the requirements precedent for the final disbursement are explicitly and specifically addressed in the "Inter-Creditor Agreement".

COSTS INCLUDED IN "DEVELOPER FEE"

Any funds disbursed to the developer or sponsor for administrative costs, provision of guarantees, or fees for services are considered to be a portion of the developer fee. Payments into reserves required by lenders or investors will not be included, but payment of fees for guaranteeing against operating deficits will be included. Specific examples of items to be treated as fees (in addition to any fees charged by the developer) include:

1. Administration
2. Staff costs, including development consultants (but not historic preservation, environmental, or syndication consultants)
3. Net worth guarantee fees
4. Marketing and/or rent-up supervision fees
5. Tax credit compliance guarantee fees
6. All credit consultant fees
7. Real estate brokerage fees paid to a related party
8. Loan brokerage fees paid to a related party
9. Processing agent fees
10. Developer overhead and profit
11. Compensation for any construction management oversight provided by the developer
12. The cost of any personal guarantees
13. Reserves in excess of those customarily required by multi-family housing lenders.

Restricted Deferred Developer Fee

To allow projects to include in tax credit basis the maximum developer fee allowed by TCAC, the City/Agency may allow developers to take a restricted deferred developer fee in addition to the maximum shown above. Use of the restricted deferred developer fee will be limited to project-related expenditures such as supportive services, project buy-back reserves, and loss-of-subsidy reserves.

Treatment of "Partnership Management" or "Asset Management" Fees

These are fees paid to the General Partner of a tax credit project for handling investor relations, tax preparation, etc. The combined Partnership and Asset Management fee should not exceed \$25,000 and may increase at up to 3% per year. In general, these fees should come from annual cash flow from operations. Where the fee is funded in advance from syndication proceeds, it should be placed in escrow and paid out over time to ensure a steady stream of income to cover these costs.

Incentive Management Fee

For nonprofits, if a project has no monitoring findings or other violations of City or other agreements, and if excess cash flow from operations is available after payment of operating costs, senior debt, deferred developer fee, and reserves, the borrower may keep 50% of the remaining cash flow as an Incentive Management Fee. This additional fee must be approved by the City annually and may be used for projects and activities that would contribute directly to the borrower's (or its nonprofit affiliate's) activities relating to its affordable housing and community development activities only.