

# **PROGRAM DESCRIPTION AND UNDERWRITING REQUIREMENTS**

SEPTEMBER, 2009

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The City of Oakland and the Redevelopment Agency of the City of Oakland (City/Agency) provide financial assistance to developers of low and moderate income housing. These programs are administered by the Community and Economic Development Agency (CEDA).

City/Agency requirements are generally consistent regardless of the original source of funding. However, for certain requirements, one source of funds may allow greater flexibility than others (e.g., Agency compared to HOME). Applicants should assume that federal requirements will apply. If the use of federal funds creates a significant feasibility problem, this should be explained in the application cover letter.

In addition to NOFA-offered development loans, the City operates a Predevelopment Loan Program for eligible non-profit housing development corporations. A separate application is required.

## **ELIGIBILITY**

### **ELIGIBLE APPLICANTS**

For-profit or non-profit corporations, individuals, general or limited partnerships, or limited liability companies with demonstrated experience and capacity in the development and management of affordable rental or ownership housing may apply. Applicants without the necessary experience must enter into joint venture agreements with experienced developers. Applicants should refer to the Addendum *Minimum Developer Qualifications* for specific requirements.

### **ELIGIBLE & INELIGIBLE PROJECTS, ACTIVITIES, AND COSTS**

New construction and substantial rehabilitation (with or without acquisition) of rental or ownership property, including permanent supportive housing and transitional housing, intended for occupancy by lower income households are eligible. Development of emergency shelters for the homeless is not eligible. Projects must be at least 10 units in size, although in special cases, projects of less than 10 units will be considered.

Mixed use projects (containing both residential and non-residential space) are eligible. Generally, living space should make up the majority of the development. In any case, only the affordable housing portion of the project will be assisted and commercial costs need to be split out from the residential costs.

#### ***Ineligible Projects/Activities***

- Public housing modernization or operations
- Emergency Homeless Shelters

### **Eligible Costs**

- Property acquisition
- Demolition
- On-site improvements
- Off-site utility connections
- Construction costs necessary to construct or rehabilitate a non-luxury project with suitable amenities in accordance with the property standards described below
- Soft costs associated with the development and financing of the project
- Reasonable developer fees (see Addendum *Developer Fee Guidelines*)
- An initial operating reserve during the period in which the project is initially marketed (not to exceed 18 months after completion)
- Relocation costs

### **Ineligible Costs/Uses**

- Costs associated with construction items or materials of a luxury nature
- Furnishings (except where required for special needs projects)
- Most off-site improvements (utility connections into the adjacent street are eligible costs)
- Developer/sponsor administrative costs (other than included in the developer fee)
- Refinancing of existing debt, except in extraordinary cases
- Marketing events such as groundbreakings and grand openings
- Substitution of City funds for any source of funds that has been previously committed to the project, or represented to any other funding source as being available for the project, is not permitted.

## **AFFORDABILITY TARGETING**

See Addendum, *Income, Rent, Utility Allowance, and Housing Payment Limits* for current rent and income levels. Maximum rents must be adjusted downward by an allowance for tenant-paid utilities in accordance with the effective schedule published by the Oakland Housing Authority (OHA).

The Area Median Income (AMI) range for household income is generally higher than the rent or sales price restrictions to ensure a range of household income levels are served. Rents and tenant incomes will be annually reviewed for compliance by the City's Asset Monitor.

Note that projects which have received funding under the Redevelopment Agency's Site Acquisition Program must, under that program, have at least 25% of project units affordable to households earning less than 80% of AMI.

### **MINIMUM AFFORDABILITY - RENTAL PROJECTS**

#### ***Project Requirements***

- At least twenty percent (20%) of project units must be restricted as affordable, with annual rents (less utility allowance) of no more than 30% of 60% of the Area

Median Income, as defined by HUD, and be reserved for low-income households earning less than 80% AMI.

- ♦ At least ten percent (10%) of the affordable units must have annual rents (less utility allowance) of no more than 30% of 35% AMI, and be reserved for very low income households earning less than 50% AMI.

#### ***HOME Restricted Units***

- ♦ One hundred percent (100%) of designated HOME-assisted affordable units must have annual rents (less utility allowance) of no more than 30% of 60% AMI and be reserved for households earning no more than 60% AMI (“high HOME rent units”).
- ♦ Twenty percent (20%) of designated HOME-assisted affordable units must have annual rents (less utility allowance) of no more than 30% of 50% AMI and be reserved for households earning no more than 50% AMI (“low HOME rent units”).

#### ***City/Agency Funding in Combination with Section 8***

Projects may not increase rents above the City/Agency formula rents for tenants with tenant-based rental assistance (such as Section 8 vouchers). Units with project-based rental assistance (such as project-based Section 8), however, can rent for the maximum rent allowed under the rental assistance program provided that they are rented to a very low income household and the tenant contribution to rent is no more than 30% of the household income.

#### ***Additional Information***

Priority will be given to projects that exceed the threshold affordability minimums. Affordability restrictions apply for the full term of the regulatory agreement, regardless of whether another subsidy source (such as project-based Section 8 subsidy) continues to be available.

#### ***Annual Recertification of Tenant Income***

Owners are required to re-examine tenant incomes annually to ensure that tenants continue to meet the income requirements of this and other applicable funding programs. Rent schedules and utility allowances, including any increases, must be reviewed and approved annually by the City. In the event that a tenant's income exceeds the applicable HUD income limits for lower income households, the tenant's rent must be increased to an amount equal to 30% of the tenant's adjusted income, less an allowance for tenant-paid utilities. Projects that are also assisted with Low Income Housing Tax Credits or MHP will be subject to those relevant rules regarding over-income tenants.

### **MINIMUM AFFORDABILITY - OWNERSHIP PROJECTS**

- ♦ At least 20% of units in the project must be restricted as affordable.
- ♦ The affordable units must have an average affordability level of 100% AMI or less. For example, in a 26 unit project, 10 units could be targeted to households at 120% AMI, 10 units at 80% AMI, and 6 units at 100% AMI.

- Priority will be given to projects targeting some units to households at 80% of AMI or below.
- Households with incomes up to 120% of AMI are eligible for assisted units, *provided the average affordability level* of the affordable units is 100% of AMI or less (see example provided above).
- HOME funds, a major portion of available NOFA funds, are limited to units assisting households at less than 80% AMI.
- Affordable Sales Prices are calculated based on a formula set forth by redevelopment law. See Addendum, *Affordable Homeownership Development Program*, for further information including sales price assumptions to use for this NOFA.

A unit affordable to households earning less than 80% of AMI is one sold at an affordable sales price based on an annual housing cost of no more than 30% of 70% of AMI. The elements of an annual housing cost include principal, interest, taxes, hazard and private mortgage insurance, utilities, homeownership association dues, and maintenance.

A unit affordable to households earning less than 100% of AMI is one sold at an affordable sales price that is based on an annual housing cost of no more than 35% of 90% of AMI. The elements of an annual housing cost include the costs listed above.

A unit affordable to households earning less than 120% of AMI is one sold at an affordable sales price that is based on an annual housing cost of no more than 35% of 110% of AMI. The elements of an annual housing cost include the costs listed above.

## **FINANCING GUIDELINES**

### **MINIMUM AND MAXIMUM LOAN AMOUNTS**

- For rental projects, the maximum City/Agency loan amount is forty percent (40%) of the total residential development cost of the project's *affordable units* (those units subject to long term affordability restrictions).
- For ownership projects, the maximum City/Agency loan amount is fifty percent (50%) of the total residential development cost of the project's *affordable units* (those units subject to long term affordability restrictions).
- If applicable, the value of any City/Agency land donations will be counted as part of the maximum allowable subsidy total.
- **Please round requested loan amounts to \$1,000 increments.**
- Other sources of appropriate financing must be identified, but not necessarily committed, at the time of application. Projects will be reviewed to ensure that only the minimum level of City subsidy needed will be provided. All other sources of funding must be committed before closing of the City/Agency loan.

- HOME-assisted units are subject to the following per unit subsidy limits

Bedrooms	Per-unit maximum
0	\$126,869
1	\$145,433
2	\$176,846
3	\$228,780
4	\$251,131

- Rehabilitation projects that don't include acquisition and that have existing City or Agency debt should include existing debt as part of the 40% calculation. In order to account for previously completed construction/rehabilitation costs and existing City debt, the below formula will be used to calculate the 40% loan limit.

$$\frac{\text{NOFA request} + \text{existing City/Agency debt}}{\text{Rehab TDC} + \text{total of all existing debt, City and other}}$$

#### **REASONABLE DEVELOPMENT COSTS**

Projects with abnormally high costs – generally defined as being more than 15% above the median development cost per unit, per bedroom, or per square foot for similar projects – must provide justification for the costs. If staff does not approve the justification for higher costs or the revised budget the application may be deemed incomplete or the City could require a reduction in the development budget.

#### **CONSTRUCTION CONTINGENCY**

A 10% construction cost contingency for new construction projects or a 15% construction cost contingency for rehabilitation projects is required.

#### **DEVELOPER FEE POLICY**

See Addendum, *Developer Fee Policy for Housing Development Projects* for a detailed breakdown of allowable fees and the disbursement schedule. Previously funded projects requesting additional funds must adhere to the Developer Fee Policy in place at the time of the original funding award.

#### **MINIMUM EQUITY REQUIREMENTS**

Profit-motivated sponsor/owners (except for limited partnerships whose general partner is a nonprofit corporation) must provide equity equal to at least 10% of total project costs. The value of the project site may be used to meet the equity requirement. If the site has been owned for more than 3 years, the equity will be calculated on the basis of the current appraised value of the property, less outstanding debt. For sites which have been owned for less than 3 years, the equity contribution will be calculated on the basis of the actual acquisition cost of the property, less outstanding debt. Equity investments generated by syndication of tax credits or deferred developer fees will not be considered as an equity contribution.

Non-profit sponsor/owners are not required to provide equity.

## **GENERAL LOAN TERMS**

If loan terms other than those listed below are sought for a project, this must be explicitly stated in the cover letter and a separate explanation provided in the application. Such requests are granted at the sole discretion of the City/Agency.

### **TIMELINE OF CITY/AGENCY COMMITMENTS**

City/Agency financing commitments are made for 24 months from date of City Council approval. All other sources of funds must be committed within that time frame. A one-year extension can be requested with sufficient justification and are due by the NOFA deadline. Contact Housing Development staff for more information about what is required for an extension request. If the extension period elapses without the commitment of full project financing, projects will have their funding commitments revoked and must re-compete for funds through the NOFA. Further extensions will only be granted in extraordinary circumstances. The inability to meet a project schedule may also result in negative points for future NOFA applications.

### **MONTHLY UPDATES**

Upon commitment of funds from the City/Agency, borrower must provide written monthly updates to City staff. Monthly updates will allow City staff to anticipate upcoming approvals needed and to stay informed about efforts to move the project forward on schedule. If monthly updates are not provided in a timely manner, decreased developer capacity points may be assessed for the next NOFA application submitted by the project sponsor.

### **SUBORDINATION**

The City/Agency will no longer subordinate its affordability covenants to the deeds of trust securing other lenders' financing, except in extraordinary circumstances. The affordability covenants control, among other things, the maximum income of tenants or buyers of project units, and the maximum rents or sales prices allowed for project units. The City and Agency deeds of trust may be subordinated to private financing on a case by case basis.

### **LOAN TERMS - RENTAL PROJECTS**

Loans for rental projects are typically provided at a simple interest rate of three percent (3%) per annum, for a term of fifty-five (55) years. Payments of interest and principal will be due from excess cash flow from operations after payment of operating costs, senior debt, reserves, and deferred developer fee. To the extent payments cannot be made, they will be deferred for the term of the loan. All loans are due on sale, refinancing, or transfer (except to a related entity, such as a limited partnership, subject to City/Agency approval).

City/Agency loans will be evidenced by a promissory note secured by a deed of trust on the project. A loan agreement will specify all development obligations. Post-occupancy use restrictions will be enforced through a regulatory agreement recorded against the project – including both the land and the improvements. The minimum term for affordability restrictions is 55 years. If an Agency Site Acquisition Loan is already in place for a project, it will be consolidated with the development loans.

## **LOAN TERMS - OWNERSHIP PROJECTS**

The City intends for its investment to enable new homeownership projects to remain permanently affordable. Under the terms of the City funding and by State law, all assisted units must be sold to qualified first-time homebuyers at an affordable housing cost. This requires that the assisted unit be sold at an affordable sales price. Each time the assisted unit is sold, it must be sold at not more than the affordable sales price, which is set by formula and is dependent on the Area Median Income (as determined by HUD) and prevailing interest rates for first mortgages at the time of sale.

To help accomplish this, the City/Agency will provide a forgivable construction loan to the developer to be used for a portion of the development costs. The loan cannot exceed 50% of the total development cost of the affordable units. Loans for ownership projects are typically provided at a simple interest rate of three percent (3%) per annum, for a term of four (4) years. The City/Agency will forgive and convert to a grant that portion of its development loan equal to the difference between the total development cost and the total sales proceeds plus any other subsidies to the project. An Affordability Agreement will be recorded against the project at the beginning of construction, to be reconveyed and replaced by a Declaration of Resale Restrictions signed by each buyer as each unit is sold.

See Addendum, *Affordable Homeownership Development Program*, for a detailed description of the program.

## **ONE PERCENT LOAN FEE**

A fee equal to one percent (1%) of the loan amount will be charged for all loans. Ordinarily, this fee will be collected from loan proceeds at the initial funding. This fee may be waived for projects receiving only HOME funds.

## **DISBURSEMENT OF FUNDS**

Funds will be disbursed to borrower only for costs actually incurred. Payment for construction costs will be made on a progress payment basis, subject to approval of each draw request by the City. The City will retain ten percent (10%) of the amount budgeted for construction as a performance retention, to be released upon recordation of a Notice of Completion, release of all liens, and satisfactory compliance with any other City requirements, including City contracting programs. Additionally, the City will retain an amount equal to the portion of the developer fee to be paid upon receipt and approval of a cost certification.

## **ADDITIONAL FINANCING GUIDELINES FOR RENTAL PROJECTS**

### **PRESERVATION PROJECTS**

Applicants seeking to preserve existing affordable housing in danger of conversion to market-rate rents as a result of the non-renewal of expiring federal subsidies or tax credits must show that the project will remain financially feasible, with all income and rent restrictions met, throughout the term of the regulatory agreement. If a rental or operating subsidy is currently part of the financing plan, applicants must show that the project will still be feasible if that rental or operating subsidy contract is not renewed.

## **OPERATING BUDGET**

Operating budgets and 30-year proformas must meet the following criteria:

- The operating budget must show at least break-even cash flow within 18 months of initial rent-up.
- Include operating and replacement reserves (See Replacement and Operating Reserve Requirements below).
- 5% annual vacancy/collection loss for family, senior, and preservation projects and 10% annual vacancy/collection loss for SRO or special needs projects.
- 3.5% annual increase for expenses (other than property taxes and replacement reserves deposits) and 2.5% annual increase for income.
- The operating budget will be reviewed to ensure it is sufficient for proper maintenance and management but is not excessive compared to other similar properties. The Affordable Housing Operating Cost Database is a useful resource for comparables which can be found on the Community Development Exchange website of the Bay Area Local Initiatives Support Corporation (LISC) at <http://www.cdexchange.org/>.
- If rental assistance is assumed, two operating proformas must be provided, one assuming rental assistance will be renewed and one assuming rental assistance will expire after the initial contract term. Rents must remain restricted according to City/Agency requirements even if the rental assistance is no longer available.

## **CASH FLOW/INCENTIVE MANAGEMENT FEE**

For nonprofits, if a project has no monitoring findings or other violations of City or other agreements, and reserves are fully funded, excess cash flow (after payment of operating costs, reserves, senior debt, deferred developer fee, and partnership/asset management fee) will be split between the developer and the City/Agency, with 50% of excess cash flow paid to the City/Agency as a residual receipts loan payment and 50% for the borrower as an Incentive Management Fee. This fee shall be used for projects and activities contributing directly to the developer's (or its affiliate's) affordable housing programs and community development activities.

For for-profit applicants, the maximum cash on cash return on equity (annual Before Tax Cash Flow/equity) shall be 15%. The Before Tax Cash Flow is to be limited to the stated amount and excess funds must be used to repay City or Agency loans.

## **REPLACEMENT AND OPERATING RESERVE REQUIREMENTS**

City/Agency financing is generally in place far longer than other financing sources. As a result, the owner's ability to maintain and repair the project over the long term is extremely important to the City/Agency. Exceptions to the stated requirements will be granted in rare cases only. Use of replacement and operating reserves is subject to prior review and approval by the City/Agency.

- **Replacement Reserves:** 0.6% of the replacement cost of the structure annually, up to \$600 per unit for family developments and \$500 per unit for senior developments. For rehabilitation projects, developers will be required to submit a

third party replacement cost analysis in which the lifecycle and cost of major building systems is estimated and amortized over the number of units and years. Gut rehab projects should use reserve standards for new construction projects. The City reserves the right to request an updated replacement reserve analysis every five years.

- **Operating Reserves:** Annual deposits of not less than 2% of annual gross rental income are required until an operating reserve has been capitalized at a level equal to six months operating costs and debt service. The operating reserve must be maintained at the level of six months of operating costs during the term of the City or Redevelopment Agency regulatory agreement.

If a rental subsidy transition reserve is included in the project budget, that transition reserve shall be in addition to the operating reserve minimum described above.

## **DESIGN GUIDELINES**

### **PROJECT SIZE AND UNIT TYPE REQUIREMENTS**

Projects must be at least 10 units in size. In special cases, projects of less than 10 units will be considered.

For family new construction projects, at least 15% of the units must be provided for larger families (3 & 4 bedrooms) unless it can be demonstrated that such a unit mix is not feasible. For family rehabilitation projects, at least 10% of the units must be provided for larger families (3 & 4 bedrooms) unless it can be demonstrated that such a unit mix is not feasible.

### **LIVABILITY STANDARDS**

The City's provision of affordable housing financing is a long term investment. Underwriting includes assuring that each development will be well-designed and well-constructed to provide decent, safe affordable housing over the long term for a population that does not have a wide range of housing choices.

The quality and marketability of any housing unit is affected by its size and the livability of the space including the space's ability to accommodate the potential number of occupants and the necessary furniture. A larger unit does not guarantee the successful accommodation of a particular furniture layout over a more efficiently laid out smaller one. The project must meet all code requirements imposed by the Building and Planning Departments, but it may be appropriate to exceed these requirements for certain projects.

- Unit layout and size – Housing Development staff will carefully review unit size and layout for livability.
- Windows/Lighting/Ventilation – Units must be designed so that there is adequate natural light and ventilation.
- Parking – In general, the minimum number of spaces required for the particular site shall be provided. Any reductions in that number must be approved by both

- the Planning/Zoning staff and the Housing Development staff. Secure resident bicycle parking should be provided per the City's bicycle parking ordinance.
- Building Shape and Appearance – The structure should respond to its context, enhance the neighborhood, and create a pride of place for its residents.
  - Landscaping – The design should be appropriate for the intended use of all of the residents.
  - Quality of Building Materials – Materials must be of a quality and durability to assure long term viability of the structures.
  - Open Space/Storage Space - The project must address adequate levels of the following, based on the type of project, location and target group. Examples of acceptable open space/storage space include:
    - common space (e.g. community room);
    - secure, on-site laundry facilities;
    - children's play area (family projects);
    - storage space (both inside and outside of the unit)
    - open space (public and private space within the housing complex)

#### **SUSTAINABLE DEVELOPMENT**

In 1998, Oakland adopted a Sustainable Development Initiative to direct attention to sustainable development principles for environmental, economic, and social equity considerations. The initiative will apply to any NOFA project receiving over \$100,000. Sustainable development issues are often described as encouraging the Three E's:

- *Environmental* sustainability guidelines address site and design, construction waste, water impacts, materials selection, indoor environmental quality, energy impacts and alternative transportation solutions.
- *Economic* dimensions address affordable housing, employment, and local ownership.
- *Equity* considerations address the relationship, both physical and social, of the project to its community and neighborhood.

#### ***Green Building Ordinance:***

Currently, the City is drafting a Green Building Ordinance. The Ordinance will follow the parameters of Build It Green's GreenPoint Rated program and apply to all new single and multifamily residential construction. For more information about Oakland's Green Building Ordinance, contact Heather Klein, Planner, at [hklein@oaklandnet.com](mailto:hklein@oaklandnet.com) or Garrett Fitzgerald, Sustainability Coordinator, at [gfitzgerald@oaklandnet.com](mailto:gfitzgerald@oaklandnet.com).

#### ***Green Points Project Tool and Green Building Guidelines:***

Applicants are required to complete the ***Multifamily GreenPoint Checklist*** or the ***Single-Family GreenPoint Checklist*** developed by StopWaste.org in Alameda County and Build It Green. The checklist tracks green building measures in the proposed project design and provides a preliminary GreenPoint score. The proposals will be evaluated based on the total GreenPoint score. As a minimum threshold, projects will be required to meet at least the minimum scores in each category set forth in the GreenPoint

Checklist (energy, community, health, water, and resources) and achieve at least a total score of 50 points.

It is understood that most proposals are in early stages of design development, and therefore, the applicants are asked to complete the GreenPoint checklist based on their intent to incorporate green building components. However, projects awarded City/Agency funding will be evaluated for the actual design prior to start of construction. The projects will be required to achieve the same GreenPoint score range as was achieved for NOFA scoring, and to have compliance verified at the end of the project by a GreenPoint Rater. If the project does not achieve the score range initially proposed, the developer may be assessed negative points on the next NOFA application submitted.

To contact a certified GreenPoint Rater, visit:

[http://www.builditgreen.org/files/uploads/CGBP/CGBP\\_Directory.pdf](http://www.builditgreen.org/files/uploads/CGBP/CGBP_Directory.pdf). Applicants may also directly contact Build It Green with a request for a Rater.

The GreenPoint Checklists are accompanied by the ***Residential Green Building Guidelines*** and are the basis for Build It Green's third party rating program. The ***New Home Construction and Multifamily Guidelines*** are available at the city's Green Building Resource Center (2nd Floor, 250 Frank Ogawa Plaza) or from [www.buildgreennow.org](http://www.buildgreennow.org). Free technical assistance is also available to multi-family housing developers. Please contact Wes Sullens at StopWaste.org ([wsullens@stopwaste.org](mailto:wsullens@stopwaste.org)) for more information. The Affordable Green Housing Coalition also has an informative website on various strategies and Bay Area resources for greening affordable housing at [www.greenaffordablehousing.org](http://www.greenaffordablehousing.org).

For rehabilitation guidelines, applicants may refer to LISC's ***Green Rehabilitation of Multifamily Rental Properties***, which includes a checklist and recommendations. The guidelines are available on LISC's website at <http://www.lisc.org/content/publications/detail/7383/>.

Build It Green also provides technical assistance for sustainable landscaping and offers the ***Bay-Friendly Landscape Guidelines***. For more information about the program and available funding, please contact StopWaste.org.

#### **INCLUSION OF COMPUTER TECHNOLOGY**

Projects must provide the capacity for high-speed internet access in each unit by a means that does not impede use of the primary telephone line. This requirement may be waived for rehabilitation projects if infeasible. Priority is given to projects that go beyond this minimum by providing and maintaining computers in a common area and providing computer training as an element of their Resident Services Plan.

## **OTHER GUIDELINES AND CITY REQUIREMENTS**

### **SITE CONTROL**

At the time a development proposal is submitted, the developer must demonstrate that it has, and will maintain until the land is acquired, site control of the property for which funding is being requested. See the *Application Instructions* for acceptable documentation.

### **APPRAISALS**

If acquisition is included in the development budget, applicants are required to submit a recent (completed within six months of the application deadline) appraisal of the project site and any existing improvements as part of the application. If no acquisition is involved, an appraisal is not required. See the *Application Instructions* for more specific guidelines.

### **DONATED PROPERTY**

If land or buildings have been donated for the project, the value of the donated property should be included in the total development cost both as an acquisition cost and as a source of funds. If the property was donated by the City or Redevelopment Agency, the value of the donated property will be included when calculating the percentage of City/Agency subsidy.

### **PHASE I AND II**

Applications must include a Phase I Environmental Assessment. If recommended by the Phase I, a Phase II must be provided before a project will be recommended to the City Council. With the Phase II, applicants must also provide a discussion of mitigation measures, the impact of any recommendations on the project budget, design, etc.

### **BROWNFIELD SITES**

The City of Oakland may have available a loan and grant pool for qualified borrowers, including eligible non-profits, to conduct environmental site assessment and cleanup of brownfield sites within the City. These funds are not awarded through this housing NOFA. For eligibility criteria and an application, please contact the CEDA Brownfields Program at 238-3741 or email [mprado@oaklandnet.com](mailto:mprado@oaklandnet.com).

### **MANAGEMENT AND MARKETING**

A Preliminary Management Plan and Marketing Plan or Marketing and Sales Plan must be submitted in the application. For rental projects, a Final Management and Marketing Plan will be required 180 days prior to construction completion and a Management Contract must be submitted to the City 90 days prior to construction completion. The final Marketing Plan must be approved prior to beginning rent-up activities, including marketing flyers and application materials.

For ownership projects, the final Marketing and Sales Plan must be approved prior to commencement of construction and marketing of units. Developers must include pre-purchase homebuyer counseling, offer post-purchase counseling for at least one year, and provide one year home warranties.

A market study, rental survey, recent sales comparables, or an alternative acceptable to the City must also be submitted, according to the guidelines in the *Application Instructions*. Projects must be marketed in accordance with the City's *Affirmative Fair Marketing Procedures*.

### **COST CERTIFICATION**

Developers must arrange for an independent cost certification on completion of a project. Approval of this certification is a requirement for the City's release of a substantial portion of the developer fee. This likely will require additional information from what is provided in a TCAC cost certification. At a minimum, the City Cost Certification should include:

- ♦ **Cost Reconciliation Schedule:** The analysis must include a final sources and uses budget based on all the line items of the original City approved budget. The borrower must show all sources in lien order and include limited and general partner contributions, if applicable. This should include loans or equity contributions that were spent and expenses that were incurred during the development period. The borrower must show the total proposed initial sources and uses and the actual sources and uses by line item. The analysis must explain any difference for line items that are over or below 10% of the original sources and uses budget. Please note that the City's approved budget must be used for this analysis. For HOME projects, ensure that all of the City's final uses were spent on eligible costs.
  
- ♦ **Analysis of Reserve Accounts:** The borrower must show the total proposed initial reserve amounts and the actual initial reserve deposit. The analysis must explain any difference between the proposed reserve amount and the deposited amount.

It is recommended that project sponsors check with City staff to ensure the format and information provided will be acceptable to the City prior to starting the Cost Certification.

### **RELOCATION**

State or federal relocation law will apply for projects that will temporarily or permanently displace current business or residential occupants, and relocation assistance and benefits may be required which can add substantially to the project cost. Developers considering projects which may result in temporary or permanent relocation are encouraged to contact City staff for assistance in relocation matters. See the *Application Instructions* for more information.

### **RESIDENT SERVICES AND SPECIAL NEEDS UNITS**

For rental projects, supportive and social service coordination reasonable for the population being served may be included as a cost paid by building operations. However, direct service provision may not be paid for from the building's operating funds. For questions about potential sources of services funding, contact Susan Shelton in the City of Oakland's Department of Human Services at [srshelton@oaklandnet.com](mailto:srshelton@oaklandnet.com).

"Special needs units" are defined as units reserved for populations including the following: developmentally disabled, survivors of physical abuse, homeless persons, persons with chronic illness including HIV/AIDS or mental illness, displaced teenage parents (or expectant teenage parents), individuals exiting from institutional settings, youth exiting foster care, chronic substance abusers, or another specific group as approved by the City of Oakland.

#### **UNITS FOR HOMELESS HOUSEHOLDS OR THOSE AT RISK OF HOMELESSNESS**

The City will utilize the definition of "homeless" and "at risk of homelessness" from the MHP Regulations of the state Department of Housing and Community Development, Section 7341(b), which can be found at <http://www.hcd.ca.gov/fa/multifamilyregs.html>.

Projects with units set aside for formerly homeless households or those at risk of homelessness must provide sufficient supportive services for the population served and show sufficient commitments for services.

The Corporation for Supportive Housing's website includes useful resources regarding the development, financing, and management of permanent supportive housing, [www.csh.org](http://www.csh.org).

#### **EVIDENCE OF COMMUNITY OUTREACH**

For new construction projects or substantial rehabilitations, the developer must submit evidence of community outreach to residents surrounding the proposed development and to relevant community groups. See the *Application Instructions* for a list of required items.

This is not applicable for rehab projects unless unit count, building envelope, parking, use, or other substantial changes are planned for the property. However, occupied rehab projects must show that information regarding the planned work and its potential impacts on residents has been provided to any existing tenants.

#### **MIXED-USE PROJECTS**

The City of Oakland has developed a citywide retail enhancement strategy which encourages mixed-use developments in commercial districts. To ensure new retail space is well-designed, marketable and well-located, the City has created guidelines for retail space in mixed-use development. Developers of mixed-use projects are encouraged to contact Keira Williams in CEDA's Business Development Services unit for a copy of the guidelines, general technical assistance on the topic and review of the commercial portion of the proposed project, at [kwilliams@oaklandnet.com](mailto:kwilliams@oaklandnet.com).

Proposals for developments with housing and commercial space must include the following:

- Evidence of demand for commercial/retail and marketability of space (with a market study or a survey of comparables and vacancy rates), or at least half the commercial/retail space pre-leased.

- Letters of interest from funders of the commercial portion of the development at time of application. **City or Redevelopment Agency loan will not be closed until funding for the commercial portion is secured.**
- A development budget with the costs attributable to the commercial/retail component clearly delineated from those for the residential component.

#### **MIXED-INCOME PROJECTS**

In mixed income properties, the affordable units must not be substantially different from the market-rate units. All lower income units must be of the same construction type as market rate units, but need not contain the same interior amenities or the same amount of floor space as long as livability is maintained. The exterior of the lower income units must be indistinguishable from the exterior of the market rate units. Lower income units should be reasonably distributed throughout the project and should not be isolated or segregated in only one portion of the project.

#### **CONTRACT COMPLIANCE – EMPLOYMENT PROGRAMS AND REQUIREMENTS**

Applicants must comply with the following City of Oakland Employment and Contracting programs:

- 20% Local and Small Local For Profit and Not For Profit Business Enterprise Program (4/2004)
- 50% Local Employment Program (4/2004)
- 15% Oakland Apprenticeship Program (5/2000)
- Payment of Prevailing Wages
- City of Oakland Living Wage Ordinance
- City of Oakland Equal Benefits Ordinance
- Electronic Certified Payroll Submittals

More information can be found at the City of Oakland's website at <http://cces.oaklandnet.com/cceshome/> and at the meeting with Contract Compliance staff to be held prior to the NOFA deadline. Submission of documentation regarding the above requirements and a meeting with Contract Compliance will be required prior to loan closing and construction start.

Additional contracting requirements and instructions include:

- The use of contractors that appear on the federal government's list of suspended and debarred contractors is expressly prohibited.
- The Developer must require Prime Contractors and all subcontractors to enter ALL certified payroll reports into the Labor Compliance Program (LCP) tracker in accordance with Special Provision Section 7 subsection 7-2.2.1. The LCP tracker is a web based program that monitors the payment of Davis Bacon and State of California prevailing wages. The prime contractor will be charged \$80 per month for using the LCP tracker; subcontractors will not be charged for this service.

- The 20% L/SLBE requirement must be met on both the professional services and construction phases of each project.
- The general contractor selected must comply with the State of California Prevailing Wage as determined by the Department of Industrial Relations. Pursuant to the California Code of Regulations Section 16001(d), residential projects consist of single-family homes and apartments up to and including four stories. Applicants seeking residential wage rates must submit a request to Contract Compliance at least 90 days prior to the bid advertisement. The request for residential rates must include a description of the project, type of project (i.e. new construction or rehabilitation), the number of units, and the anticipated bid advertisement date. The residential prevailing wage determination includes those crafts(s)/classifications(s), or type of worker(s) not covered by the general determination. Special determinations are issued on a project-by-project basis and cannot be issued retroactive to the bid advertisement date of the project. In the absence of a residential prevailing wage determination, the awarding body should refer to the State of California Director's General Prevailing Wage Determinations.

Residential prevailing wage determinations are issued based upon information provided which indicates that the contract has not been let or signed for the project. If the construction contract is not signed and work does not begin within twelve (12) months of the residential wage determination, you must inform the division of Contract Compliance so that updated rates can be obtained.

In the absence of a special residential wage determination, the general prevailing wage determination must be used. These rates can be obtained via the internet at [www.dir.ca.gov/DLSR](http://www.dir.ca.gov/DLSR).

#### **OAKLAND RESIDENT AND WORKER PREFERENCE**

The City of Oakland has established a policy granting preference to Oakland residents and Oakland workers in the selection of tenants or homebuyers for affordable housing projects and programs assisted by City or Redevelopment Agency housing NOFA funds. All Oakland residents and workers would be eligible for the preference regardless of the length of time of residency or employment and the preference would be applied only if and to the extent that any other funding sources for the project permit the preference.

#### **DISPLACEE PREFERENCE**

Preference must be given to residents who have been displaced as a result of the City of Oakland's or the Oakland Redevelopment Agency's public projects or the City's code enforcement activities. If such a tenant household is referred to the property, the next available assisted unit must be rented to the displaced household, irrespective of waiting lists, if the household is otherwise eligible for occupancy.

#### **REVIEW AND APPROVAL OF PLANS**

Because Housing Development may have different concerns about the physical structure than the Planning or Building Department address, Housing Development staff must be involved throughout the planning/design review process. It is the obligation of the

developer to provide adequate notification to the Housing Development Manager of all upcoming meetings with Planning and/or Building staff and with the Design Review Committee and Planning Commission regarding the project. Both Planning and Housing Development staff must approve the plans for the development.

#### **PLANNING AND ZONING**

A "Zoning Summary" is required as part of the Application. Applicants must submit a request in writing to the City's Zoning Division, at 250 Frank H. Ogawa Plaza, Suite 2114. See the NOFA Application Exhibit, "*Letter of Conformity with Planning and Zoning Requirements*" for detailed instructions.

Successful NOFA applicants will be required to hold a "Pre-Application Meeting" with Planning and Zoning to review their project. The pre-application meeting is not required to obtain the Zoning Summary letter; however, applicants may wish to arrange a review meeting before submitting their NOFA application. Please allow the Zoning Division a minimum of 4 weeks to process a pre-application conference request.

Developers must provide advance notice to the Housing Development unit of any meetings with the Building Division, Planning and Zoning Divisions, Design Review Committee and Planning Commission.

#### **INSURANCE**

During development, developers must obtain comprehensive general liability and property (hazard) insurance coverage of at least \$2 million. The City/Agency also requires property damage or builder's risk insurance in an amount equal to 100% of the replacement cost of the structure, with a lender's loss payable endorsement in favor of the City/Agency. Construction contractors will be required to obtain liability and builders risk insurance in an amount equal to \$2 million. Automobile insurance, professional liability, workers compensation, and employer's liability coverage are also required.

After completion, similar levels of liability and hazard coverage are specified by the regulatory agreement. All policies must name the City/Agency as an additional insured; property insurance must have a lender's loss payable endorsement. For more information on insurance requirements, please contact Housing Development staff.

#### **PAYMENT AND PERFORMANCE BONDS**

General contractors will be required to provide payment and performance bonds equal to 100% of the construction contract amount.

#### **ENVIRONMENTAL REVIEW AND ASSESSMENT (CEQA & NEPA)**

**CEQA:** Prior to staff recommendation to the City Council, projects must be assessed in accordance with the California Environmental Quality Act (CEQA). Applicants must submit a preliminary study addressing CEQA prepared by a 3<sup>rd</sup> party consultant. For developments likely to be exempt from CEQA, the study should verify the reasons for exemption. For developments which will need more extensive environmental review, the study should define the scope of that work and present a plan for completing it.

The study must briefly review and comment on the following areas of impact, as presented in the *Guidelines for Implementation of California Environmental Quality Act, Title 14, California Code of Regulations*:

- Traffic
- Noise
- Historic Resources
- Exposure to Hazardous Materials (consultant analysis/commentary on the Phase I Environmental Assessment, and Phase II where recommended)
- Creek, wetland, and seismic issues, when applicable

Additional studies and environmental review may be required during the entitlement process or based on significant changes to project plans.

**NEPA:** If the proposed project is financed with federal funds, the project must also be assessed in accordance with the National Environmental Policy Act of 1960 (NEPA) prior to loan closing. NEPA review should be coordinated with the CEQA review to the extent possible.

**Choice-Limiting Actions Prohibited During NEPA Review.** Because of the likelihood that federal funds will be awarded, applicants must refrain from undertaking activities that would have an adverse environmental impact or would otherwise limit the choice of reasonable alternatives between the time of application submittal and when the City has completed its environmental review process. Such activities include acquiring, rehabilitating, converting, leasing, repairing or constructing property, any kind of site preparation, or committing or expending HUD or non-Federal funds for HOME program activities with respect to any project eligible under this NOFA. If the applicant has entered into a purchase agreement or contract for any of the above activities prior to applying for NOFA funds, work may continue pursuant to that contract. But amendments to the contract or new contracts may not be entered into. HOME funds may not be used to reimburse an applicant for project related costs incurred after the applicant has submitted the application for funding and before the completion of the City's environmental review process except for activities that are excluded and not subject to federal environmental review requirements, and for certain relocation costs.

Applicants must sign a certification that they understand this restriction (see *Application*). The prohibition against choice-limiting actions begins on the date that the application is submitted to the City. Applicants are encouraged to check with CEDA staff regarding eligible expenditures after the submission of an application. Failure to comply with this requirement could result in a project being ineligible for City funding.

CEDA staff will seek to obtain NEPA approval in a timely manner. However, **if you are seeking readiness points for the first round of Low Income Housing Tax Credits or MHP**, please contact Jeff Angell at 238-6158 prior to submitting your NOFA application to discuss the NEPA timeline. Completing the NEPA review, including local and federal noticing periods, takes a minimum of 8-12 weeks after receipt of all necessary information.

## **FEDERAL REQUIREMENTS**

If the applicant may be receiving federal funding (such as HOME funds), they will be required to comply with applicable federal statutes and laws, including, but not limited to:

- Section 3 of the U.S. Housing Act of 1968, as amended
- Equal Opportunity and related requirements in 24 CFR Section 982.53
- Section 504 of the Rehabilitation Act of 1973
- Americans with Disabilities Act of 1990
- Architectural Barriers Act of 1968
- Fair Housing Act of 1988
- National Environmental Protection Act (NEPA )
- Federal prevailing wage requirements (Please note that projects will be required to meet the higher of Federal or State prevailing wage requirements).

## **DISABLED AND SENIOR ACCESSIBILITY**

Developments assisted by the City/Agency must meet the requirements of the Americans with Disabilities Act and the Fair Housing Act, among other local, state, and federal laws. Projects with any federal funds must also meet the more stringent accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (24 CFR 100.205 and Part 8). Section 504 sets minimum percentages of accessible units, and calls for fully accessible common areas, among its numerous requirements. For projects funded with HOME, 5% of the total number of units must be accessible to people with physical disabilities, and an additional 2% of units must be accessible to people with auditory and visual disabilities, as defined in the Uniform Federal Accessibility Standards (UFAS).

**Where Section 504, the Fair Housing Act, or ADA apply, the developer and project architect must make a written certification of compliance.**

## **LEAD-BASED PAINT**

The use of lead-based paint on City/Agency funded projects is prohibited. Testing and abatement of lead-based paint in rehabilitation projects may be required. Projects typically must follow the federal guidelines, which require lead-safe work practices and notification to prospective residents of potential lead-based paint hazards, among other requirements. In addition, Project sponsors should be aware of a new EPA regulation coming into full effect in April 2010 that requires all renovators of pre-1978 homes and child-occupied facilities to be trained in lead-safe work practices and certified by the EPA. For more information go to [www.epa.gov/lead/pubs/trainingproviders.htm](http://www.epa.gov/lead/pubs/trainingproviders.htm) Training is available through the Alameda County Lead Poisoning Prevention Program and other EPA accredited training providers.

Alameda County Lead Poisoning Prevention Program may have funds available for lead hazard control work at family rental properties (1-bedroom units or larger) built before 1978 that are either vacant or occupied by low-income tenants. More information is available at <http://www.aclppp.org/leadfunding.htm>.

**RESTRICTION ON CONDOMINIUM CONVERSIONS**

Project owners may not convert restricted rental units to condominium or cooperative ownership or sell condominium or cooperative conversion rights for the Property during the term of the 55-year Regulatory Agreement. Oakland will give reasonable consideration to any proposal to convert Project Units to limited-equity cooperative ownership.

**LIMITATION ON CAMPAIGN CONTRIBUTIONS**

The Oakland Campaign Reform Act prohibits parties doing business or seeking to do business with the City of Oakland or the Redevelopment Agency from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, negotiations. Applicants are required to submit the *Acknowledgement of Campaign Contributions Limits* form.

**NONDISCRIMINATION**

All applicants must agree not to discriminate on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC), or any other arbitrary basis.