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**City of Oakland  
Housing and Community Development Department**

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**August 9, 2019**

**Notice of Funding Availability**  
**for the Acquisition, Rehabilitation, &**  
**Preservation of Multifamily Affordable Housing**

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**NOFA ADDENDA** (See Separate Table of Contents)

*#1: Minimum Developer Qualifications*

*#2: Affordable Homeownership Development Program*

*#3: Guidelines for Developer Fees on Housing Development Projects*

*#4: Affirmative Fair Marketing Procedures*

*#5: Income, Rent, Utility Allowance, and Housing Payments Limits*

*#6: Census Tracts with Poverty Rates Below City Average*

*#7: Census Tracts with Homeownership Rates Below City Average*

*#8: Everyone Home Property Management Guidelines*

*#9: Insurance Requirements*

*#10: Oakland Displacee, Neighborhood Resident, Oakland Resident and Oakland Worker Preference  
Regulation for Multifamily Affordable Housing*

**NOFA APPLICATION INSTRUCTIONS** (See Separate Table of Contents)

# City of Oakland Housing Development Financing Program

August 9, 2019

## ***NOTICE OF FUNDING AVAILABILITY***

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### ***Acquisition, Rehabilitation, & Preservation of Multifamily Affordable Housing***

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On behalf of the City of Oakland, the Housing and Community Development Department (HCD) is pleased to announce that it is accepting loan applications for affordable rental and ownership housing development.

On November 8, 2016, City of Oakland voters approved Bond Measure KK authorizing the City to issue \$600 million in general obligation bonds to fund various City infrastructure and affordable housing projects. Of the total bond allocation, \$100 million was set aside for Anti-Displacement and Affordable Housing Preservation Projects where funds may be spent on the acquisition, rehabilitation, or new construction of affordable housing as set forth in the City's Affordable Housing and Infrastructure Bond Law Ordinance, which was adopted by the Oakland City Council in City Ordinance 13403 C.M.S., dated November 29, 2016, and codified in Chapter 4.54, Article IV, of the Oakland Municipal Code (also set forth in Resolution No. 86774 C.M.S. adopted by the City Council on June 19, 2017, as amended by Resolution No. 86814 C.M.S. adopted by the Council on June 29, 2017).

On August 1, 2017, the City issued its first tranche of general obligation bonds for Measure KK and a total of \$55 million was allocated to affordable housing projects including transitional housing, site acquisition, rehabilitation & preservation, and new construction activities. Of the total amount \$24,481,195 has been spent and \$18,636,846 is encumbered/committed, which together is approximately 78 percent of the total funds allocated. The remaining 22 percent of the \$55 million (\$11,881,959) will be directed towards the acquisition and conversion of unregulated units 25 or less, the acquisition of transitional housing, and for legalizing un-permitted accessory dwelling units (ADUs) subject to income restrictions.

The City plans to issue its second tranche of general obligation bonds in Fiscal Year 2019-2020 for Measure KK where the remaining \$45 million for the preservation of affordable housing is to be allocated to affordable housing projects including the activities mentioned above. The City anticipates there will be approximately \$15 million available for this NOFA. The criteria set forth below are in accordance with the City's Affordable Housing and Infrastructure Bond Law.

Please note that City of Oakland staff reserves the right to prioritize existing pipeline projects over new NOFA applicants during the project evaluation phase. Pipeline projects are defined as City of Oakland affordable housing projects (new construction & rehabilitation) that applied and requested funding through an established City HCD funding program (not including Predevelopment and Health & Safety Loan Programs), in the 2017-2019 funding cycle, regardless of whether they received funding. In addition, projects to be built on City owned land

are considered pipeline projects. An active list of current pipeline projects may be downloaded from the City's website: <https://www.oaklandca.gov/resources/nofa-opportunities>. Applicants should request the **amount needed to ensure feasibility** of their project regardless of the amount of funds that will be available through this process.

Projects that apply to the NOFA will be ranked based on scoring criteria described in the NOFA. Staff will request that the City Council approve the ranked list of projects and a total amount of funds to be awarded. Top ranking projects will be awarded from the current issuance of bond funds and subsequent projects will be considered in subsequent rounds of funding.

City loans are provided for acquisition-conversion, rehabilitation, and preservation of affordable rental, homeownership, and permanent supportive housing projects and are intended to fill the gap between development costs and financing available from private and other public sources. Applicants are expected to pursue financing from all available sources, if possible. Applicants are also encouraged to contact HCD's Housing Development Services Unit with questions regarding program requirements and the application process.

In addition to this NOFA, two separate NOFA's will be released in fiscal year 2019-2020:

1. For the Acquisition & Conversion of unregulated housing with minor repair needs to regulated housing. Twelve million (\$12 million) will be set aside for projects with 25 units or less, to include community land trusts and limited equity housing cooperatives. Further details on this program component will be finalized in time for a fall NOFA release.
2. For the New Construction of Affordable Multifamily Housing (10 units or more), restricted to the City's existing pipeline. This NOFA will be released simultaneously with the subject NOFA. A subsequent NOFA for non-existing pipeline new construction projects may be released should additional affordable housing funds become available. This NOFA is being released simultaneously with the Acquisition, Rehabilitation, & Preservation NOFA.

Other City affordable housing funds besides Measure KK bond funds will be made available during this NOFA cycle, including Jobs Housing Impact Fees, Affordable Housing Impact Fees, HOME, and Low-Moderate Income Housing Fund loan repayments.

The City will take the following priorities into account for the 2019-2020 NOFA process:

- Assistance for housing projects where the tenants are at risk of displacement and in neighborhoods experiencing heightened levels of gentrification;
- Assistance for housing projects targeting people experiencing homelessness and extremely low-income households, including Permanent Supportive Housing projects;
- The preservation of the City of Oakland's affordable housing stock;
- Conversion of market rate housing to affordable housing;
- Project Readiness; and

- Subject to further discussion, City HCD is exploring methods to advance racial equity through funding guidelines.

## **NOFA PROCESS AND TIMELINE**

**Applications must be received at HCD's office located at 250 Frank Ogawa Plaza, Suite 5313, no later than 4:00 p.m. on Friday, September 27, 2019. Applications submitted after this deadline will not be accepted.**

**Each sponsor will be permitted to submit two applications, per NOFA, for this NOFA round. In the event of a joint application, the application will count towards the lead developer's application limit.** Projects requesting additional funds count as part of this cap. However, projects that are requesting conversion of short-term loans to permanent financing will not be included in this cap.

**Applicants are strongly encouraged to attend the NOFA pre-application meeting to be held on Thursday, August 22nd at 1:00 p.m.** at City Hall, Hearing Room 3. Planning staff will explain CEQA and NEPA requirements, the City's required employment and contracting programs will be presented, the Oakland Housing Authority will answer questions about Section 8 Project-Based Voucher Assistance, and applicants will have an opportunity to ask questions about the NOFA.

Applicants should review the entire NOFA package, as the application includes a certification that they will comply with all requirements. Prior to the application deadline, please check the Housing and Community Development website regularly for any updates, corrections, or posted questions and answers regarding this NOFA at <https://www.oaklandca.gov/resources/nofa-opportunities>.

Applicants must submit:

- **One original** of a complete Application for Housing Development Financing with all required supporting materials and one electronic copy of a complete application on a flash drive.
- Applications should be in three-ring binders of good quality and appropriate size, with numbered dividers that correspond with the Housing Development Financing Application Checklist.
- To reduce the size of applications, large application exhibits (Appraisal, Phase I, etc.) should be double-sided. Please do not include full copies of Environmental Impact Reports (EIRs) or the backup documentation embedded in Environmental Site Assessments such as a Phase I or Phase II report. Instead, please include this information electronically on the flash drive. Cover pages for application exhibits (other than the numbered divider tabs) are not needed.
- The Checklist should be used as the Table of Contents for the application.

- **All materials must be submitted electronically, as noted above.** City forms/templates may be downloaded from the City's website at <https://www.oaklandca.gov/resources/nofa-opportunities>.
- **Applications that are deemed substantially incomplete may be rejected.**

Once the staff review is completed, a staff report will be prepared for presentation, first to the City Council's Community and Economic Development Committee and then to the full City Council. The approval of the staff report and authorizing resolutions will take a minimum of five to seven weeks from the time the report is drafted. Final funding approval by the City Council is expected in mid to late January, 2020.

Once a loan is approved and the developer has secured its remaining gap funding sources, staff will draft loan documents for review by the developer and the City Attorney. All items required at this stage must be submitted and approved by the City before the loan can close. Construction may not start until all required items have been received and approved, and the City has issued a Notice to Proceed.

### **STEPS PRIOR TO APPLICATION**

**Building Code Compliance:** Applicants are required to meet with the Building Services Department to research all building code requirements and to determine if additional code regulations may be triggered by the proposed scope of rehabilitation work. The meeting must be held prior to submitting the NOFA application. Applicants are required to go to the Building Department counter (250 Frank Ogawa Plaza, Second Floor) and ask to speak with the Engineer of the Day about the proposed project.

**Pre-Application Meeting:** Applicants are strongly encouraged to attend a NOFA pre-application meeting to be held on Thursday, August 22<sup>nd</sup> at 1:00 p.m. at City Hall, Hearing Room 3.

**Environmental Review:** If you are seeking readiness points for the first round of tax credits, please notify Planning staff and start the NEPA process early.

California Environmental Quality Act (CEQA) review must also be completed before a project's funding commitment can be finalized; see the *Program Description, Environmental Review and Assessment*, for more information. Staff expects to go to Council with funding recommendations in January 2020, and a CEQA determination must be completed by the time staff is prepared to present to Council to be recommended for funding.

**Choice-Limiting Actions are prohibited prior to NEPA review:** Applicants must refrain from undertaking activities, including acquisition, 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. Failure to comply with this requirement may result in cancellation of funding commitments. If the applicant has entered into a purchase agreement or other contract prior to applying for NOFA funds, the



actions pursuant to that contract are allowed prior to completion of the NEPA review. But that contract may not be amended or new contracts entered into.

**Applications become public records:** Applicants should understand that, under the California Public Records Act and the City’s Sunshine Ordinance, all documents that they submit in response to this NOFA are considered public records and will be made available to the public upon request following the application deadline.

The City reserves the right to suspend, amend or modify the provisions of this NOFA, to reject all proposals, to negotiate modifications of proposals, or to award less than the full amount of funding available.

*The City of Oakland is an Equal Housing Opportunity and Accessible Housing provider.*



## ***SPECIAL FEATURES IN THE NOFA***

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The following summarizes significant features in this year's NOFA. Since this is not an exhaustive list, please make sure to completely review each section of the NOFA.

### **1. Policy Changes related to Measure KK Funding:**

- The Affordable Housing Programs under the Measure KK Affordable Housing Bond Law prioritize strategies, programs and projects to help long-term Oakland residents and their families avoid displacement. The programs will help preserve Oakland's diverse communities and address the destabilizing displacement effects resulting from substantial rent increases, family incomes not keeping pace with housing costs, and housing supply not meeting current and projected demand. Additionally, the programs will prioritize strategies that increase the supply of affordable housing for those who are homeless and households most vulnerable to displacement, including extremely low income renters, and limited income seniors, veterans, and people with disabilities.
  
- The Affordable Housing Programs under the Measure KK Affordable Housing Bond Law also prioritize housing affordable to extremely low income households (30% AMI and lower). The City shall spend a minimum of 20% of affordable housing bond funds for housing for extremely low income households. While each project is not required to meet this threshold, the City's ability to comply with the requirement may influence the final funding decisions.
  
- Per the Measure KK Affordable Housing Bond Law, not more than 15% of expended City affordable housing bond funds may be used for housing affordable to persons and families of moderate income (between 80% AMI and 120% AMI). While each project is not required to meet this threshold, the City's ability to comply with the requirement may influence the final funding decisions.
  
- The owner/property manager must agree to incorporate the *EveryOne Home Property Management Guidelines* (see Addendum), into the Management and Marketing Plans only for projects with units targeting homeless households or individuals.
  
- Under the California Constitution, general obligation bonds may only be used to finance the acquisition or improvement of real property. Financing equipment, supplies, routine maintenance, or ongoing operations is not permitted.

## 2. Competitive Programming Funded by Measure KK

Program	Description
<p>A. Acquisition, Rehabilitation, &amp; Preservation of Multifamily Affordable Housing (Rental &amp; Ownership)</p>	<ul style="list-style-type: none"> <li>• Acquisition and/or substantial rehabilitation of existing regulated multifamily housing.</li> <li>• Acquisition and substantial rehabilitation of existing, unregulated multifamily housing.               <ul style="list-style-type: none"> <li>○ To include the conversion of unregulated multifamily housing to regulated multifamily housing.</li> </ul> </li> <li>• For existing regulated buildings, all units shall keep the same level of affordability as required by existing affordability covenants or provide a deeper level of affordability.</li> <li>• For existing unregulated buildings and upon vacancy and new move-ins, vacancies must be filled with lower income households at or below 60% AMI, with rents no higher than 60% AMI.</li> <li>• Priority to projects with deeper affordability levels.</li> <li>• Acquisition of properties for ownership use under the following conditions:               <ul style="list-style-type: none"> <li>○ To include land trusts and limited equity cooperatives.</li> <li>○ 100% of units restricted as affordable funded with City of Oakland loan funds.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Projects must include resale restrictions to ensure long term affordability.</li> <li>○ Affordable units must have an average affordability level of 100% AMI. The City will not fund units greater than 120% AMI.</li> <li>○ Priority will be given to projects targeting 80% AMI or below.</li> <li>● Restricted to 5 units or more.</li> <li>● Maximum loan amount not to exceed \$150,000 per unit or a maximum of \$5 million. The amount may be reviewed and revised accordingly to ensure feasible subsidy amounts.</li> <li>● To prohibit the acquisition of vacant land.</li> </ul>
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### 3. Replacement Reserve Requirement

The City will use the replacement reserve requirement of \$500 per unit as defined in the Uniform Multifamily Regulations of the State Department of Housing and Community Development, Section 8309 (b)(2), which can be found at <http://www.hcd.ca.gov/grants-funding/already-have-funding/uniform-multifamily-regulations.shtml>.

### 4. Maximum Developer Fee

- For 9% tax credit projects, the maximum developer fee allowed shall be the maximum allowed by TCAC: a) \$2 million for rehabilitation or adaptive reuse and b) \$2.2 million for new construction.
- For 4% tax credit projects, \$2 million developer fee allowed in development sources with an additional \$1.5 million allowed from operational income as deferred fee. Between up-front developer fees paid by development sources and deferred fees paid by operational income, developer fee shall not exceed \$3.5 million.

- For non-tax credit projects, a \$12,500 per unit developer fee will apply, not to exceed \$500,000.

**5. Preference Policy**

The City of Oakland's Preference Policy has been updated per Ordinance No. 13379, dated July 19, 2016. See *Oakland Displacee, Neighborhood Resident, Oakland Resident and Oakland Worker Preference Regulations for Multifamily Affordable Housing* in the addenda section for more information.

**6. Alameda County Measure A1 Bond funds**

Projects being considered for Alameda County Measure A1 Bond funds must comply with the guidelines established by Alameda County. Note that all available Measure A1 Oakland Base Funds and North County Regional Funds are now fully committed.

**7. Quality of Applications**

- **Substantially incomplete applications may be rejected.**

## SCORING CRITERIA

Complete applications will be scored in the following categories. Maximum points in each category are noted. The discussion following contains a more detailed description of the criteria. Some categories are not applicable for certain types of projects. As a result, scores are calculated as the percentage of points attained out of the total points possible for each project type. Please note that points will be rounded to the nearest ¼ point. Projects scoring less than 50% of possible points are unlikely to be awarded funding. In all cases, points are awarded for exceeding, rather than meeting, the threshold requirements for the category. See Discussion for further information.

	<i>Rental</i>	<i>Owner</i>	<i>Self Score</i>
<b>I. Readiness</b>	40 pts	40 pts	
A. Leveraging	5	5	
B. Funding Commitments	15	15	
C. Discretionary Land Use Approvals	20	20	
<b>II. Location</b>	35 pts	35 pts	
A. Displacement Prevention	10	10	
B. Geographic Equity	5	5	
C. Educational Quality	5	5	
D. Neighborhood Revitalization	5	5	
E. Proximity to Public Transit	5	5	
F. Proximity to Grocery or Drug Store	5	5	
<b>III. Target Population and Project Attributes</b>	31 pts	10 pts	
A. Income Targeting	16	10	
B. New Units for People with Special Needs	5	N/A	
C. New Permanent Supportive Housing Units for Homeless Individuals and Families	10	N/A	
<b>IV. Developer Experience and Capacity</b>	33 pts	32 pts	
A. Developer Experience Exceeds Minimum	10	10	
B. Developer Capacity	8	8	
C. Developer Financial Strength	6	6	
D. Strength of the Development Team	3	2	
E. Bonus Point Category	6	6	
<b>V. Urgency</b>	10 pts	10 pts	
<b>VI. Penalty for Nonperforming Previously Funded Projects</b>	-10pts	-10 pts	
<b>Total Possible Points</b>	149	127	

## DISCUSSION – SCORING CRITERIA

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### I. **Readiness** (40 points)

#### A. **Leveraging:** Degree to which outside funding will be pursued (5 points).

- Points will be awarded for projected financial resources **excluding** City of Oakland resources and tax credit equity as a percentage of the total development costs. [(leveraged financial resources/TDC)\*100]
- City resources include loan and grant funds received by or committed to the project and land donations.
- Failure to be awarded funds from proposed resources after two rounds of application shall require reevaluation of feasibility. If the project's feasibility is in question, it may lose City funding upon expiration of the City's commitment.
- The higher the percentage of leveraged funding sources, the higher the score. Points will be awarded based on the following table:

Percentage of Leveraged Financial Resources Greater than:	Points
10%	1
20%	2
30%	3
40%	4
50%	5

#### B. **Funding Commitments:** Degree to which outside funding has been committed (15 points)

- Points will be given based on non-City financing currently committed to the project, as follows:

Committed Financial Resources as a Percent of TDC Greater than:	Points
5%	1
10%	2
15%	3
20%	4
25%	5
30%	6
35%	7
40%	8
45%	9
50%	10

- Up to 5 points will be awarded for each commitment of long-term operating subsidy (e.g. Project-Based Section 8 vouchers).

C. Discretionary Land Use Approvals (20 points)

- Maximum points are awarded for sites that have obtained discretionary public land use approvals (obtaining building permits is not necessary to score points).
- Projects that have submitted their application for planning approvals will be eligible for up to 5 points.

II. Location (35 points)

A. Displacement Prevention (10 points)

Preserves existing affordable housing at risk of conversion to market rate:

- 10 points for projects at risk of conversion within two years of application submission through prepayment of a federally-insured mortgage, non-renewal of project-based Section 8 contract, expiration of tax credits or termination of other government subsidies or regulatory restrictions.
- 5 points for preservation of a Single Room Occupancy building.

Conversion of market rate housing to affordable housing:

- 5 points for market rate properties where more than one tenant has received a no-fault eviction notice within the last 12 months.
- 5 points for market rate properties that are exempt from the Rent Adjustment Ordinance because they are considered new construction (receive Certificate of Occupancy after January 1, 1983).
- 3 points for market rate properties that may have allowable increases under the Rent Adjustment Ordinance that exceed the CPI standard rent increase because current revenue is insufficient to maintain the property and/or reserves are insufficient to address deferred or imminent capital improvements. An additional two (2) points will be awarded to projects that can also demonstrate that at least 20% of the existing residents are rent burdened (rent exceeds 40% of the resident's monthly income) making the residents at risk of displacement.
- 3 points for market rate properties where the previous owner had at least three years of "banked" rent increases. An additional two (2) points will be awarded to projects that can also demonstrate that at least 20% of the existing residents are rent burdened (rent exceeds 40% of the resident's monthly income), making the residents at risk of displacement.



B. Geographic Equity (5 points)

Rental Projects:

- 5 points will be awarded for rental projects located in census tracts with poverty rates below the City average (18.7%), as shown in Addendum *Census Tracts with Poverty Rates Below the City Average*.

Ownership Projects:

- 5 points will be awarded for ownership projects located in census tracts with homeownership rates below the City average (40.7%), as shown in Addendum *Census Tracts with Homeownership Rates Below the City Average*.

C. Educational Quality (5 points, not applicable for 100% senior or special needs properties not targeted to families)

- 5 points will be awarded if the project is located within the assigned neighborhood boundaries of an Oakland Unified School District public elementary school with a School Report Card showing a high performance (green and blue color coded) in Academics for English Language Arts or Mathematics for the Academic Status Tier.
- 3 points will be awarded if the project is located within the assigned neighborhood boundaries of an Oakland Unified School District public elementary school with a School Report Card showing a mid-level performance in Academics for English Language Arts or Mathematics (yellow color coded) for the Academic Status Tier.
- Use the Oakland Unified School District's school finder tool to identify which elementary school boundary the project is in (<https://oaklandfinder.schoolmint.net/school-finder/home>) and provide this information on the application form.
- Use the Oakland Unified School District's Dashboard Guide for School Report Cards (<http://www.ousddata.org/oakland-public-school-report-cards.html>) to determine the Academic Status Tier of the school.

D. Neighborhood Revitalization (5 points)

- Points will be awarded to projects which include or combine the following, as evidenced in the Neighborhood Narrative and Revitalization Description of the Application.
  - a. Are consistent with an existing or in-progress neighborhood-specific revitalization plan such as Oakland Sustainable Neighborhoods Initiative (OSNI) and San Pablo Avenue Revitalization Coalition (SPARC) which was developed with community participation (other than a Redevelopment Plan);
  - b. Contributes to an existing or planned pattern of targeted redevelopment such as a Specific Plan Area or Priority Development Area (housing or commercial development, streetscape improvements, etc.) occurring within 1/4 mile of the project site;

E. Proximity to public transportation (5 points)

- Full points require a project location within 1/3 mile of multiple bus lines or a BART station.
- Up to 2 points will be awarded for a project location within 1/3 mile of a single bus line or shuttle.

F. Proximity to grocery or drug store (5 points)

- A project location within 1/2 mile of a full-service grocery store (where staples, fresh meat, and fresh produce are sold) or drug store will score full points.
- A project location within 1 mile will score 1 point.

**III. Target Population** (31 points rental projects, 10 points ownership projects)

A. Income Targeting: (16 points rental, 10 points ownership projects)

The Affordable Housing Programs under the Measure KK Affordable Housing Bond Law prioritize housing affordable to extremely low income households (30% AMI and lower). The City shall spend a minimum of 20% of affordable housing bond funds for housing for extremely low income households and no more than 15% of bond funds for housing affordable to persons and families of moderate income (between 80% AMI and 120% AMI). While each project serving families of moderate income is not required to meet this threshold, the City's ability to comply with the requirement may influence the final funding decisions.

Rental Projects: Points are awarded for rental projects providing extremely-low income rental units. For occupied and currently regulated housing, projects will be evaluated based on the existing and proposed rent and income restrictions. For occupied housing, currently un-regulated, projects will be evaluated based on proposed rent and income restrictions that will be applied as units are vacated. Projects with deeper affordability levels shall be prioritized.

- 5 points will be awarded to projects with a minimum of 10% of the affordable units with rents affordable at 30% of 20% of AMI.
- 8 points will be awarded to projects with a minimum of 20% of the affordable units with rents affordable at 30% of 20% of AMI.
- 3 points will be awarded to projects with a minimum of 10% of the affordable units with rents affordable at 30% of 30% of AMI.
- 5 points will be awarded to projects with a minimum of 20% of the affordable units with rents affordable at 30% of 30% of AMI.
- 8 points will be awarded to projects with a minimum of 25% of the affordable units with rents affordable at 30% of 30% of AMI

Ownership Projects: Points are awarded for ownership projects providing units for households earning less than 80% of AMI (all projects are required to have an average affordability level of 100% AMI).

- One point awarded for each one full percentage point of units with affordable sales prices based on an annual housing payment of 30% of 70% of AMI (targeted to households up to 80% of AMI).

B. Housing for Households with Special Needs (5 points, rental projects only)

- One point awarded for each 5% of new units set aside for households with special needs, up to a maximum of 5 points (see definition of Special Needs in the *Program Description-Other Guidelines and City Requirements* section). Only units newly designated for households with special needs will be considered for points.
- To receive points, a Resident Services Plan must be submitted that demonstrates how essential supportive and social service needs of the population will be provided and funded. Providing accessible units will not in and of itself be sufficient to score points.
- To receive points, an executed MOU with a service partner that will deliver the services described in the Resident Services Plan must accompany the Resident Services Plan. If the owner is providing direct services, a commitment letter or a board resolution will satisfy this requirement.

C. Permanent Supportive Housing for Homeless Households (10 points, rental projects only)

- One point awarded for each 5% of new permanent housing units for homeless families or individuals, up to a maximum of 10 points (see definition of Permanent Supportive Housing and Homeless in the *Program Description-Other Guidelines and City Requirement* Section).
- Units must be Permanent Supportive Housing (not transitional) to receive points in this category.
- Occupants of a development undergoing rehab with City of Oakland funds will be deemed to qualify as Permanent Supportive Housing if they qualified upon initial occupancy.
- To receive points, a Resident Services Plan must be submitted that demonstrates how essential supportive and social service needs of the population will be provided and funded. Providing accessible units will not in and of itself be sufficient to score points.
- To receive points, an executed MOU with a lead service provider that will deliver the services described in the Resident Services Plan must accompany the Resident Services Plan. If the owner is providing direct services, then a commitment letter or a board resolution will satisfy this requirement.
- To qualify as Permanent Supportive Housing and to receive points:
  - A Supportive Services Plan must be submitted that demonstrates how essential supportive service needs of the population will be provided and funded.
  - The Lead Service Provider must be identified and have at least three years of experience providing supportive services in supportive housing across at least two projects and serving at least twenty households in total.

- The Property Manager must be identified and have at least three years of experience managing supportive housing units in at least two projects of no fewer than ten units each.
- The owner/property manager must agree to incorporate the *EveryOne Home Property Management Guidelines* into the Management and Marketing Plans for the property only for projects with homeless units (see Addendum #8 *EveryOne HOME Property Management Guidelines*).
- Developer must agree to follow the State of California’s housing first principles, Welfare and Institutions Code (WIC), Division 8, Miscellaneous [8255 (d)(1) and (2)(A) and (B)]:  
[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=WIC&division=8.&title=&part=&chapter=6.5.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=WIC&division=8.&title=&part=&chapter=6.5.&article=)

**IV. Developer Experience and Capacity** (33 points rental, 32 points ownership projects)

Applicants should refer to the Addendum *Minimum Developer Qualifications* for minimum requirements to qualify for funding.

A. Developer Experience Exceeds Minimum (10 points)

- Points are awarded for completing more than three affordable housing projects on time and within budget within the last ten years (by the Developer, not other team members). Two (2) points will be awarded for each additional project (up to 6 points).
- Points will be given for completing more than one project similar to the proposed project by the Developer within the last ten years. Two (2) points will be awarded for each additional similar project (up to 4 points).
- If the developer is a joint venture, projects will be scored based on the experience of the lead developer. Where partners have approximately equal participation, the individual scores of each partner will be averaged.

B. Developer Capacity & Staffing (8 points)

- Points are awarded based on evidence that the lead staff, including the Project Manager and supervisory staff, proposed to work on the current proposal have the necessary experience and that the organization has adequate staffing capacity to undertake the project.

C. Developer Financial Strength (6 points)

- Points are awarded based on evidence that the Developer is financially sound and will be able to sustain the costs of effectively following through with the current proposal, based on review of current interim and previous years audited financial statements. **The lead applicant must provide a non-consolidated financial statement.** Financial statement review will evaluate the organization's net assets, debt equity ratio, current assets and liabilities ratio, and other factors, using the Organizational Underwriting tool developed by Alameda County.

D. Strength of Development Team (3 points rental, 2 points ownership)

- Points are awarded based on evidence that the Development Team members (Developer Principals, Property Manager, Attorney, Architect, Financial Consultant, etc.) exceed the minimum requirements.

E. Bonus Point Category (a maximum of 6 points)

- 2 points will be awarded if within a joint venture partnership, the less experienced partner is allowed first right of refusal to purchase the land and/or building after the 15-year tax credit compliance period;
- 2 points will be awarded for Permanent Supportive Housing projects that commit to using Alameda County's Home Stretch Coordinated Entry System in their tenant selection process to fill designated permanent supportive housing units for homeless individuals with disabilities;
- 2 points will be awarded for committing ground floor commercial space at below market rates to non-profit organizations and arts & cultural users;
- 2 points will be awarded where more than 50% of the project is set aside for live-work units for artists.

**V. Urgency of Rehabilitation Work** (10 points)

There is no cumulative scoring in this section. Only one category may be applied.

- 10 points for current or imminent conditions that pose significant threats to health, safety or security of residents or staff as per the Physical Needs Assessment (PNA) results.
- 8 points for code violations subject to abatement orders or potential legal enforcement.
- 8 points for properties where the property owner is in violation of, or has multiple complaints related to documentable housing/building code complaints/violations.
- 1 point for each major building and structural components that are past their useful life up to a maximum of 5 points.

**VI. Penalties for Nonperforming Previously Funded Projects** (-10 points)

Within 24-months preceding a funding application, events occurring in connection with projects with City funding under the control of the sponsor will be used as the basis for penalties. Events will not result in negative points if they have been fully resolved as determined by, or to the satisfaction of the City as of the date of application.

Points may be deducted at the City's discretion with a maximum deduction of 10 points for the following reasons.

- Failure to properly maintain a project as determined by the City's property site inspections.
- Failure to comply with prevailing wage/Davis-Bacon, living wage, or other City contracting and employment programs.

- Unresolved defaults under any City agreement or on any agreement for a project that has City funding.

Other significant violations of requirements of the City's housing development programs, programs of other public agencies, or agreements with private lenders (such as inadequately maintaining books and records; failure to comply with fair housing requirements; failure to achieve sustainability criteria; failure to properly certify tenant income eligibility; failure to adequately qualify prospective first-time homebuyers, etc.) that haven't been cured within a reasonable time period as determined by the City.

## ***PROGRAM DESCRIPTION AND UNDERWRITING REQUIREMENTS***

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The City of Oakland (the City) provides financial assistance to developers of low and moderate income housing. These programs are administered by Oakland's Housing and Community Development (HCD) Department.

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 joint venture agreements with experienced developers. Applicants should refer to the *Addendum Minimum Developer Qualifications* for specific requirements.

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

##### ***Eligible Projects/Activities***

- Eligible projects include the following:
  - Long term preservation of existing regulated rental or ownership housing.
  - Acquisition of existing un-regulated rental or ownership housing for conversion to regulated housing.
  - Rehabilitation (with or without acquisition) of rental or ownership property, including permanent supportive housing, intended for occupancy by lower income households as well as requests for loan extensions of site acquisitions loans.
  - Projects seeking to convert their site acquisition loan to permanent financing.
- The applicant must demonstrate that replacement reserves and any other non-City sources of financing are insufficient, ineligible or unavailable for use on the project. A detailed narrative describing the lack of other sources must be included in the application cover letter.
- Rehabilitation projects must have been constructed at least 10 years ago to be eligible for rehabilitation funds.
- Projects must be at least five units in size. 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 separated from the residential costs.
- Mixed income projects: Only the affordable housing portion of the project will be assisted and commercial costs need to be separated from the residential costs.

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

- Acquisition of vacant land
- Public housing modernization or operations
- Emergency homeless shelters

### ***Eligible Costs***

- Demolition
- On-site improvements
- Off-site utility connections
- Construction costs necessary to rehabilitate a non-luxury project with suitable amenities in accordance with the property standards
- Soft costs associated with the development and financing of the project
- Refinancing of existing debt to eliminate operating deficits or maintain affordability, as long as the cost of refinancing does not exceed the budgeted rehabilitation costs
- An initial operating reserve during the period in which the project is initially marketed (not to exceed 18 months after completion)
- Reasonable developer fees (see Addendum *Developer Fee Guidelines*)
- Relocation costs

### ***Ineligible Costs/Uses***

- Permanent relocation of residential and/or commercial tenants. Projects that require permanent relocation of residential tenants are not eligible for funding.
- 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).
- 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.
- Capitalized replacement reserve.

## **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 can be 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.



## MINIMUM AFFORDABILITY - RENTAL PROJECTS

### ***Project Requirements***

- One hundred percent (100%) of units **funded** with City of Oakland loan funds must be restricted as affordable at or below 60% AMI.
- Rents for affordable units must be the lesser of the designated restricted rent limit or ten percent (10%) below market rate within a 1 mile radius.
- The City shall give preference to housing affordable to extremely low income households (30% AMI and lower). The City shall spend a minimum of 20% of affordable housing bond funds for housing for extremely low income households. While each project is not required to meet this threshold, the City's ability to comply with the requirement may influence the final funding decisions.
- Not more than 15% of expended City affordable housing bond funds may be used for housing affordable to persons and families of moderate income (between 80% AMI and 120% AMI). While each project is not required to meet this threshold, the City's ability to comply with the requirement may influence the final funding decisions.
- For existing restricted affordable housing projects, all units shall keep the same level of affordability as required by existing affordability covenants or provide an even deeper level of affordability. Affordable housing projects that do not have a City of Oakland Regulatory Agreement must provide a copy of existing affordability covenants.
- For acquisition of properties without long-term affordability restrictions, units that become available for rent after the date of the loan must be restricted to serve households or individuals at or below sixty percent (60%) of AMI, with rents no higher than 60% AMI.
- Priority to projects with deeper affordability levels.

### ***City Funding in Combination with Alameda County A1 bond funds***

Projects that applied for Alameda County A1 bond funds must comply with affordability targets established by Alameda County. See <http://www.acgov.org/cda/hcd/bond.htm>

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

Projects may not increase rents above the City 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 they are rented to an extremely 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 meet affordability targets as established in the Measure KK Affordable Housing Bond Law. 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 for all restricted units 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 other state sources such as MHP will be subject to those relevant rules regarding over-income tenants.

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

- ♦ For acquisition of properties for ownership use, 100% of units funded 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).*
- ♦ Affordable Sales Prices are calculated based on a formula. 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**

- There is a maximum loan amount not to exceed \$150,000 per affordable unit or a maximum of \$5 million per project.
- If applicable, the value of any City land donations will be counted as part of the maximum allowable subsidy total.
- **Please round requested loan amounts to \$1,000 increments.**
- The City loan amount may be up to one hundred percent (100%) of the development costs of the project's affordable units as long as the development costs does not exceed the per unit maximum amount. However, when feasible, projects should secure additional funding. Projects will be scored based on their ability to leverage additional funds.
- 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 loan.

### **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 minimum of 25% construction cost contingency for rehabilitation projects is required.

### **DEVELOPER FEE AND OTHER ALLOWABLE FEES POLICY**

See Addendum, *Developer Fee and Other Allowable Fees Policy for Housing Development Projects* for a detailed breakdown of partnership, asset, incentive management fees, and other allowable fees and the developer fee disbursement schedule.

### **REFINANCING LOANS**

For refinancing in conjunction with capital improvements funding, the following threshold requirements apply:

- The cost of refinancing does not exceed the budgeted rehabilitation costs.
- The applicant must provide a detailed narrative that describes the need for refinancing to fund imminent capital improvements and maintain the affordability of the housing to be refinanced with respect to its targeted population.

## **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 based on 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, the cover letter must explicitly state the requested terms with a detailed explanation of the reasons you are requesting such terms. Such requests are granted at the sole discretion of the City.

## **TIMELINE OF CITY COMMITMENTS**

City 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. If necessary, please state the request to extend the timeline of the City's commitment in the cover letter. Housing Development staff will review project for feasibility and assess the likelihood of receipt of proposed funding. 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, 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.

## **SUBORDINATION**

The City does not subordinate its affordability covenants to the deeds of trust securing other lenders' financing, with the exception of County, State, and Federal funding sources (subject to staff approval and to the ratio of loan to total development cost). The affordability covenants control, among other things, the maximum income of tenants of

project units, and the maximum rents allowed for project units. The City deed 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, transfer (except to a related entity, such as a limited partnership, subject to City approval) or at the end of the fifty-five (55) year term.

City 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.

#### **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, 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 no 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 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 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.

#### **LOAN FEES**

- **Monitoring Fee:** After project completion, all projects will be required to pay a monitoring fee as established by the Master Fee Schedule. Per the City of Oakland Master Fee Schedule for 2019-2020, a \$140 per unit per year monitoring fee should be factored in to the annual operating budget.

- Subordination Fee: \$1,400 subordination fee if after project completion, the owner requests subordination of the City's Deed of Trust.
- Modification Fee: \$1,000 modification fee if after project completion, the owner requests modification of the City's Deed of Trust or Regulatory Agreement.
- Resale Fee: \$895
- Assumption Fee: \$2,000

#### **DISBURSEMENT OF FUNDS**

Funds will be disbursed to borrower only for costs 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, Developer fee will be disbursed per Addendum *Guidelines for Developer Fees on Housing Development Projects*.

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

#### **SECTION 8 PROJECT-BASED VOUCHER ASSISTANCE**

The Oakland Housing Authority (OHA) may utilize the City of Oakland's 2019-2020 NOFA as the competitive selection process required to award Section 8 Project-Based Vouchers (PBV). Due to the uncertainty of federal funding however, please note that Project-Based Vouchers may be limited or unavailable at the time of the NOFA Awards. OHA reserves the right to suspend, amend or modify the provisions of this Project-Based Voucher offering and may negotiate modifications, award more or less than the full amount of PBV funding originally requested by a project, or reject all proposals entirely.

Projects selected for 2019-2020 NOFA funding must be located within the Oakland Housing Authority's jurisdiction and the units must be subject to City of Oakland oversight and regulation to be eligible to request PBV's from OHA. Eligible projects must be either new construction projects that are currently in the City of Oakland's Affordable Housing Pipeline or acquisition and/or substantial rehabilitation projects that are "At-Risk" as defined by the California Tax Credit Allocation Committee regulations. Projects that have received a previous award of Project Based vouchers are not eligible. OHA will also target available vouchers first to units designated for twenty (20) and thirty (30) percent AMI households and below and those providing service enriched housing for special needs populations. If awarded a City funding commitment, the project will be issued a Letter of Invitation to request Section 8 Project Based Vouchers from OHA. The project must then submit a request in response to and in accordance with instructions provided in the Invitation. OHA will then review responses and based on guidelines and priorities outlined in the OHA Development Policy, make provisional

awards subject to available funding. The Oakland Housing Authority Development Policy can be found on OHA's website at:

<http://www.oakha.org/AboutUs/ReportsPolicies/Pages/default.aspx>.

OHA's Board of Commissioners must approve an award of Section 8 Project-Based Vouchers to a project. Projects must be an eligible housing type for PBV assistance (24 CFR 983.52 and 983.53) and meet accessibility requirements in accordance with the regulations implementing Section 504 of the Rehabilitation Act of 1973. Projects must also complete an Environmental Review under the National Environmental Policy Act (NEPA), a Subsidy Layering Review (SLR), and are subject to HUD Section 3 hiring goals and Davis-Bacon labor standards. Projects completing all applicable OHA and HUD reviews may then execute a Section 8 Project-Based Voucher Housing Assistance Payments (HAP) contract with OHA for an initial 20-year contract term. The OHA may also agree to a 20-year extension for an aggregate 40-year term. A project may utilize a site-based waiting list to select applicants for PBV assisted units and OHA reserves the right to require local preferences in determining the order of selection from an owner administered site-based waiting list.

Projects that request PBVs should also understand that the Fair Market Rents shown in the Income, Rent, Utility Allowance, and Owner-Occupied Housing Payment Limits addendum are published by HUD annually and are the basis for which public housing agencies set their voucher payment standards. It is the OHA Voucher Payment Standard that establishes the maximum approvable contract rent for a PBV program unit. The OHA will rely upon a rent comparability survey and the rent schedule authorized in the HUD approved Subsidy Layering Review to determine initial PBV contract rents for the project.

For additional information about the Oakland Housing Authority's PBV program, interested parties can review OHA's Administrative Plan, Chapter 17 on OHA's website- [www.oakha.org](http://www.oakha.org) or contact Ahmed Karimi, Oakland Housing Authority, Sr. Management Analyst at (510) 587-2115, or by email at [akarimi@oakha.org](mailto:akarimi@oakha.org).

**Sponsors are requested to submit their applications and project budgets assuming no Section 8 PBV assistance will be available.** If a project receives a PBV award and is able to leverage additional permanent financing that reduces the need for City funding, the City's funding commitment may be reduced based on the amount of additional funds leveraged.

## **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 positive cash flow inclusive of all fees within 18 months of initial rent-up and first year Debt Service Coverage ratio shall not be less than 1.10:1. Ideally, the budget should show sufficient cash flow to make a modest payment to residual receipt loans.
- Include operating and replacement reserves (See Replacement and Operating Reserve Requirements below).
- Include Asset Monitoring Fee of \$140 per unit per year (per City of Oakland Schedule of Fees for 2019-2020).
- 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.
- If the project has a commitment for rental assistance, 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 per City requirements even if the rental assistance is no longer available.
- For non-tax credit projects, asset management fees may not exceed \$12,500 annually. Tax credit projects are allowed a combined partnership/asset management fee of no more than \$34,000 with an escalation of 3.5% per year and are only allowed to the extent cash flow is available after payment of operating expenses, debt service, and deposits to reserves.

## **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 current partnership/asset management fee) will be split between the developer/sponsor and the City, with 50% of excess cash flow paid to the City as a residual receipts loan payment and 50% for the



developer/sponsor as an Incentive Management Fee. If the project is owned by a partnership, the partnership agreement should clearly indicate that the Incentive Management Fee will be paid to the developer/sponsor. 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. If other lenders also require residual receipts payments, the developer/sponsor's proportion of the excess cash flow will be reduced to 25%. The lenders will receive distributions of the remaining 75% of the excess cash flow based on relative loan amounts. Staff should be included in any negotiations of residual receipts loan payments. Deferred partnership/asset management fee can only be paid from the developer sponsor's portion of the Incentive Management Fee.

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 loans.

#### **REPLACEMENT AND OPERATING RESERVE REQUIREMENTS**

City 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. 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.

- **Replacement Reserves:** 0.5% of the replacement cost of the structure annually, up to \$500 per unit. 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 no 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 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.

## **OTHER GUIDELINES AND CITY REQUIREMENTS**

### **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:***

The City of Oakland has adopted a Green Building Ordinance that will apply to all projects. For more information about the Ordinance, go to the following website: <http://www2.oaklandnet.com/Government/o/PBN/OurServices/GreenBuilding/index.htm>.

#### ***Multi-family Recycling Program:***

All multi-family buildings (5+ units) are required by state and local law to arrange for recycling services for residents and provide information at least annually to employees, tenants, and contractors describing how to properly use the recycling and garbage containers. All residents in multi-family buildings or complexes may recycle bottles, cans, jars, rigid plastic containers, paper and cardboard. For information about your recycling rights and requirements under both state and local law, go to the following websites:

<http://www.calrecycle.ca.gov/Recycle/Commercial/default.htm>  
[www.RecyclingRulesAC.org](http://www.RecyclingRulesAC.org)

#### ***Certification Programs:***

***Rehabilitation Projects:*** As a minimum threshold for funding, projects must comply with Oakland's Green building program. However, two Build It Green-GreenPoint Rated certifications are possible for rehabs, an "Elements" certification (for minor rehabilitations) or a "Whole House" certification (for more extensive rehabs).

### **Green Building Guidelines and Technical Assistance:**

A wealth of information regarding green building techniques can be found from the following resources:

- Oakland's Green Building Resource Center (2nd Floor, 250 Frank Ogawa Plaza), or <http://www2.oaklandnet.com/Government/o/PBN/OurServices/GreenBuilding/index.htm>,
- StopWaste, at [www.stopwaste.org](http://www.stopwaste.org) or [www.multifamilygreen.org/](http://www.multifamilygreen.org/)
- Build It Green, at [www.builditgreen.org](http://www.builditgreen.org), especially for information about the GreenPoint Rated program.

### **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 appraisal of the project site and any existing improvements as part of the application. Appraisals must have been completed within six months of the application deadline, or, if the project has already been acquired, within six months of acquisition. 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, the value of the donated property will be included when calculating the percentage of City 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.

### **CITY COUNCIL MEMBER MEETINGS**

City of Oakland staff should attend and be included in the planning of all meetings with City Council members or their staff regarding affordable housing development projects. Please ensure enough advance notice is given to housing development staff prior to scheduling any meeting with a member of the City Council or their staff.

## **MANAGEMENT AND MARKETING**

All projects with units targeted to households or individuals experiencing homelessness, must incorporate the *EveryOne HOME Property Management Guidelines* and all projects must incorporate *the Oakland Displacee, Neighborhood Resident, Oakland Resident and Oakland Worker Preference Regulation for Multifamily Affordable Housing* (see Addendum) into their management and marketing practices. Management Plan and Marketing Plan or Marketing and Sales Plan must be submitted in the application. Projects must be marketed in accordance with the City's Affirmative Fair Marketing Procedures.

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.

## **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.
  
- ♦ **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

**Permanent relocation of residential and commercial tenants is an ineligible use of funds offered through this NOFA.** 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. A detailed relocation plan and budget is required for all projects that involve temporary relocation of tenants. See the *Application Instructions* for more information.

## RESIDENT SERVICES COORDINATION

For rental projects, supportive and social service coordination reasonable for the population being served may be included as a cost paid by building operations. Costs associated with case managers providing more intensive services to the residents may not be paid by building operations.

## SPECIAL NEEDS HOUSING

For NOFA scoring purposes, the City will utilize the definition of “Special Needs Populations” from the MHP Regulations of the state Department of Housing and Community Development, Section 7301 (z), which can be found at <http://www.hcd.ca.gov/grants-funding/active-funding/mhp.shtml>.

## HOMELESSNESS DEFINITION

For NOFA scoring purposes, the City will utilize the definition of "homelessness" from the MHP Regulations of the state Department of Housing and Community Development, Section 7301 (l), which can be found at <http://www.hcd.ca.gov/grants-funding/active-funding/mhp.shtml>.

## PERMANENT SUPPORTIVE HOUSING

Permanent Supportive Housing (PSH) is an evidence-based housing type that combines supportive services and housing that is affordable to families and individuals who are experiencing homelessness. Key attributes of PSH include:

- It is tenancy housing in which the tenant holds a lease or rental agreement and is responsible for payment of their rent;
- It is permanent housing, wherein the tenant has all rights of tenancy pursuant to Federal, State and local laws;
- Services are voluntary and not a condition of tenancy.

The City encourages PSH projects that will demonstrate the following core values:

- Tenant screening and selection practices that seek to affirmatively reduce barriers to entry such as poor credit/financial history, lack of rental history, and criminal history (notwithstanding other funder requirements/criteria);
- Acceptance of referrals directly from shelters, street outreach, drop-in centers, and other parts of the crisis response system;
- Supportive services that emphasize engagement and problem solving and service plans that are highly tenant-driven;
- Supportive services that are informed by a harm-reduction philosophy.

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).

#### **EVERYONE HOME: ALAMEDA COUNTY'S PLAN TO END HOMELESSNESS**

The EveryOne Home Plan to end homelessness in Alameda County aims to create affordable and available housing units for key target populations – individuals and families that are homeless or at-risk of homelessness, extremely low-income households impacted by serious mental health issues or living with HIV/AIDS. The EveryOne Home website provides additional information and resources at <http://www.everyonehome.org>.

EveryOne Home has adopted *Property Management Guidelines* (see Addendum) to ensure that screening procedures do not unintentionally exclude those who most need the housing, such as those who have struggled with disabilities, homelessness, and other difficulties in their lives. All projects with homeless units must agree to incorporate the *EveryOne HOME Property Management Guidelines* into their management and marketing practices. Companion materials, including the sample application form referenced in the Guidelines, can be found on the EveryOne Home website at <http://www.everyonehome.org>.

#### **EVIDENCE OF COMMUNITY OUTREACH AND TENANT NOTIFICATION AND INVOLVEMENT**

For projects that will convert market rate housing to affordable housing, developer must submit a community outreach plan that includes residents surrounding the development and relevant community groups. Additionally, applicants are required to work closely with tenants to discuss how conversion to affordable housing may impact them.

For rehabilitation projects, applicants are required to work closely with tenants and give them sufficient notice(s) about the rehabilitation or conversion plans for the project. The notification(s) should include scope, scheduling, whether temporary relocation is likely to be required and if it is required, the length of time of the relocation. It is also important that the notice to tenants reassures them that if temporary relocation is required, tenants will be moved to vacant units in the building to the greatest extent possible. However, if off-site temporary relocation is required, the notice must inform tenants that they will be assisted financially. All relocations must comply with local/state/federal laws.

#### **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.

## **PHYSICAL NEEDS ASSESSMENT**

All applications must include a Physical Needs Assessment (PNA), prepared by a third party qualified architect, contractor or construction manager, completed within the last 12 months. The PNA should describe the emergency repairs or the capital improvements that are either required or recommended for immediate attention and the rationale for doing so. City staff recommends that all hard costs be confirmed by contractor's and/or architect's estimate.

All applications must include a 20-year Replacement Reserve Analysis, including anticipated replacement reserve deposits and expenditures over the same period.

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

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

- 50% Local and Small Local For Profit and Not For Profit Business Enterprise Program (L/SLBE)
- 50% Local Employment Program
- 15% Oakland Apprenticeship Program
- 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 <https://www.oaklandca.gov/departments/contracts-compliance> and at the meeting with Contract Compliance staff to be held prior to the NOFA deadline. It is recommended that sponsors who receive City funding awards meet with Contract Compliance staff early in the predevelopment process to ensure a complete understanding of all the options regarding how the project may meet the requirements. Submission of documentation regarding the above requirements and a meeting with the contractors and Contract Compliance staff will also be required prior to 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 a monthly fee for this service (subcontractors will not be charged).

- The 50% L/SLBE requirement must be met on both the professional services and construction phases of each project. A minimum of 25% of this requirement must be met with SLBE participation.
- The general contractor selected must comply with Davis Bacon, if applicable, and 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 met 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 DISPLACEE, NEIGHBORHOOD RESIDENT, OAKLAND RESIDENT AND WORKER PREFERENCE**

The City of Oakland has established a policy granting preference to Oakland displacees, neighborhood residents, Oakland residents and Oakland workers in the selection of tenants or homebuyers for affordable housing projects and programs assisted by City housing NOFA funds. See Addendum *Oakland Displacee, Neighborhood Resident, Oakland Resident and Oakland Worker Preference Regulation for Multifamily Affordable Housing*

**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.

#### **INSURANCE**

During development, developers must obtain comprehensive general liability and property (hazard) insurance coverage of at least \$2 million. The City 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. 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. See Addendum, *Insurance* for complete insurance requirements.

After completion, similar levels of liability and hazard coverage are specified by the regulatory agreement. All policies must name the City as an additional insured; property insurance must have a lenders 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 shown to meet the requirements of the California Environmental Quality Act (CEQA). Projects with a completed CEQA clearance (certified EIR, or negative declaration) have met this requirement, but must submit their CEQA documentation. For other projects, applicants must submit a Preliminary CEQA Checklist, which covers materials needed for the CEQA determination. Where specific studies are needed, work should be done by a qualified consultant. If you believe your proposal will affect historic resources, or will require design review, please contact planning staff as soon as possible before submission.

Studies required by the CEQA Checklist are due with the NOFA application. If additional CEQA-related work is required by Oakland Planning staff, it must be submitted to Planning no later than 45 days from the due date of this NOFA; otherwise, the application will likely have to be delayed for a future NOFA. If it appears that additional CEQA work will be required, we recommend that you contact Planning and Zoning (238-3911) to submit a Pre-Application as early as possible prior to the NOFA submittal date as the development and review of CEQA related documents may exceed 45 days.

The Preliminary CEQA Checklist and other applicable forms may be downloaded from the City's website: <https://www.oaklandca.gov/resources/nofa-opportunities>.

**California Senate Bill 35:** For project consideration of a streamlining determination per California Senate Bill 35, please download the *SB 35 Streamlining Checklist* from the City's website: <https://www.oaklandca.gov/resources/nofa-opportunities>.

**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 the City's HCDD 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.

City HCDD staff will assist developers in their efforts 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 other sources**, please contact housing staff 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, 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 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 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. If applicable, Project sponsors should be aware of the EPA regulation 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/renovation.htm](http://www.epa.gov/lead/pubs/renovation.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.achhd.org/>

#### **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 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.

**OAKLAND REDEVELOPMENT AGENCY**

According to state law, the Oakland Redevelopment Agency dissolved on February 12, 2012. The City of Oakland elected to assume the housing assets, functions, and obligations of the Redevelopment Agency. Therefore, all previous housing development loans, agreements, and obligations entered into by the Redevelopment Agency have now been assumed by the City of Oakland.

**NONDISCRIMINATION**

All applicants must agree not to discriminate on the basis of race, color, ancestry, national origin, religion, sex, gender, sexual orientation, gender identity, creed, age (except lawful senior housing), 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.