



CITY OF
FOLSOM
DISTINCTIVE BY NATURE

Affordable Housing Loan Program Guidelines

Version 1.0
07/08/2025

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1. Introduction

The City of Folsom (the “City”) supports the rehabilitation and new construction of affordable rental housing for low-income, very low-income, and extremely low-income households with funding from inclusionary in-lieu fees for new residential development (Folsom Housing Fund/Fund 238) and fees associated with new commercial development (Housing Trust Fund/Fund 221). Together, these sources are used to fund the City’s Affordable Housing Loan (“AHL”) program. The purpose of these Guidelines is to provide transparency and direction to potential applicants for AHL program funds.

AHL program funds will be used to provide gap financing to projects located in the City that are affordable to people who are at or below applicable income limits. In exchange for low-cost permanent financing, property owners will agree to income, rent, and other restrictions for an affordability period of at least 55 years. Projects are monitored for compliance during the affordability period.

Since project developers, owners, and sponsors must coordinate funders’ requirements when there are multiple funding sources, in general, the AHL Program is structured to be layered with other State and Federal financing (including, but not limited to LIHTC, HOME, and CDBG) and is intended to expand the supply of decent, safe, sanitary, and affordable housing. The AHL program is focused on low-income households at or below 80% of the Area Median Income (“AMI”) with additional emphasis on producing units affordable to low-income households at or below 60% AMI, very low-income households at or below 50% AMI, and extremely low-income households at or below 30% AMI.

2. Application and Evaluation Procedure

The City will periodically issue a Notice of Funding Availability (NOFA) for Affordable Rental Housing Development when funds are available and the City seeks to establish funding priorities and determine how the funds will be allocated. The NOFA will outline specific application deadlines, any funding focus goals (e.g., by project type, population served, etc.), and other special considerations applied to any given funding round (i.e., not all NOFAs will be the same and the City’s areas of funding emphasis may change between or across NOFAs).

A. Funding Availability

Upon submission of a proposal for AHL funds, City staff will conduct a review and analysis of the project and developer(s) as presented in the proposal. Proposals submitted in response to a NOFA will be scored based on criteria outlined in the NOFA. Regardless of strict numerical ranking, the scoring does not operate to vest in an applicant or project any right to a reservation or commitment of AHL funds. The City will, in all instances, commit AHL funds consistent with sound and reasonable judgment, prudent business practices, and the exercise of its inherent discretion.

Projects seeking AHL funds prior to the receipt of all other funding sources, including federal tax credit reservations, may be provided with non-binding Letters of Intent. Among other items, the Letter of Intent will be contingent upon 1) the then current balance of Funds 238 and 221 and/or 2) the applicant’s award from the California Tax Credit Allocating Committee (“CTCAC”) and/or the California Debt Limit

Allocation Committee (“CDLAC”) for Low Income Housing Tax Credits (“LIHTC”), if applicable, and all other necessary project financing.

B. Submission of Materials

All applicants are required to comply with the submission criteria set forth in these guidelines or within a particular NOFA.. The City reserves the right to require the submission of additional information as needed to complete project underwriting.

3. Structure of Transaction

A. Loan Types and Terms

The City will provide AHL funds in the form of a loan to the entity that owns the property. No AHL funds will be awarded, and funding commitments are not transferable without prior written City approval.

The City’s AHL Program loan is intended as construction/permanent financing. Proceeds of the AHL Program loan will only be released in conjunction with approved construction draw requests and/or submission of invoices for approved soft costs and satisfaction of all requirements outlined below.

In all cases, the AHL Program loan will:

- Have a term of 35 years¹;
- Be repayable in full upon sale, refinancing, or transfer of the property or upon maturity, whichever occurs first;
- Be secured with a deed of trust, promissory note, and appropriate UCC liens. Mortgages will be recorded in Sacramento County and may be subordinate only to an amortizing permanent first mortgage and a temporary bank construction loan, all of which must be approved by the City, if applicable.

The City will offer one of two potential repayment structures:

- For projects with senior amortizing loans (i.e., “must pay” debt), AHL program loans will be structured with annual payments equal to 50% of Surplus Cash (aka Cash Flow, Residual Cash Flow, Residual Receipts) as further defined below.

As discussed below, the City may consider deferring payments on its AHL until cumulative distributions of Surplus Cash are equal to a project’s deferred developer fee.

- For projects without senior amortizing loans, AHL Program loans will be structured as an amortizing loan with a 35-year term and an interest rate of 3% simple interest. Payments may be

¹ When necessary for tax analysis purposes, the City may consider a *longer* loan term (e.g., 55 years to match the period of affordability).

deferred for the first year following completion of construction. Based upon the City's underwriting evaluation, payments may be based on a longer amortization period with a balloon due at maturity if a project cannot be expected to fully amortize the loan.

B. Reserves Requirements

To preserve the ongoing viability of projects, the City will require the establishment and maintenance of an Operating Reserve Account and a Replacement Reserve Account (collectively, the Reserve Accounts) consistent with then current CDLAC/CTCAC requirements. All Reserve Accounts shall be held in interest-bearing segregated accounts at banks or credit unions fully licensed to do business in the State of California and insured to the maximum limit of either the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Association (NCUA) as applicable. Any interest earned on the Reserve Accounts shall remain within the Reserve Accounts.

All Reserve Accounts shall remain in place through the restriction period (i.e., 55 years) notwithstanding any change in ownership and in no circumstances may be disbursed for "exit taxes" upon any future transfer of limited partner interests.

Owners must report any withdrawal or other use of Reserve Accounts to the City within 10 days, providing information on the conditions leading to the withdrawal and the use of those funds. Initially, the City will not require the Owner to obtain permission prior to making withdrawals from the Reserve Accounts but reserves the right to require reserve accounts be established subject to a depository control agreement such that withdrawals may not be taken without the City's specific authorization to the financial institution (e.g., if the Owner has taken un-approved withdrawals or for other good cause as determined by the City). Owners must also authorize the financial institutions in which reserves are held to provide to the City, when requested, verified statements reflecting account balances and transactions.

- An **Operating Reserve** intended to protect against unexpected operating deficits which must be fully funded at or before permanent loan conversion in an amount equal to three months of estimated operating expenses and debt service under stabilized occupancy;
- A **Replacement Reserve** intended to fund future capital and rehabilitation needs. For rehabilitation projects an initial capitalized replacement reserve of the greater of i) \$1,000 per unit; or ii) the amount determined by a CNA approved by the City must be established as of initial closing. For all projects, ongoing deposits to the replacement reserve of not less than \$300 per unit per year must be made beginning no later than the date of permanent loan closing (or a date certain established by the City). Thereafter, annual deposits will be increased at an annual rate of 3.5%. The City also reserves the right to modify reserve requirements during the period of affordability based on periodic CNAs.
- For projects where the City's underwriting anticipates operating deficits during the affordability period, an additional **Operating Deficit Reserve** must be capitalized as of the initial closing;
- As may be required based on specific or unique project features, **additional specialty reserves** may be required, such as for tenant services, abnormal security costs, etc.

C. Annual Payments & Distributions

Following completion of construction and conversion to permanent financing, the City loan will require annual payments equal to 50% of Surplus Cash.²

Surplus Cash Flow will be defined as all rental and other operating income generated by the Project after:

1. Payment of the reasonable and customary operating expenses for such the Project (see Sections 5.B.IV. and 6D):
 - a. Property management fee not to exceed 4% of the Project's effective gross income;
 - b. Advertising, legal, accounting, security, and other general office administration expenses;
 - c. Utilities;
 - d. Payroll expenses, benefits, and payroll taxes;
 - e. Maintenance, repairs, grounds, pool, and turnover costs;
 - f. Property insurance;
 - g. Property taxes and assessments;
2. Costs of social service programs offered to residents (as necessary and only as appropriately determined by the City on a case-by-case basis);
3. Cash deposited into Project Reserves (including the Replacement Reserve and/or Operating Reserve) in such amounts as are required by the Project lenders (including the City) and/or tax credit investor (further including a requirement that if drawn, operating reserves must be replenished prior to any distributions of cash flow);
4. Cash deposited into any escrow for property taxes and/or insurance as may be required by any of the Project Lenders;
5. Payment of debt service on other "hard payment" loans approved by the City (including principal, interest, and any applicable mortgage insurance premium);
6. Payment of asset management fees to the tax credit investor limited partner in an amount no greater than \$7,500 per annum starting in the first year the Project receives a certificate of occupancy; and
7. Payment of asset management fees to the nonprofit managing general partner or managing member of the owner in an amount no greater than \$100 per unit per year with payments starting in the first year the Project receives a certificate of occupancy.

Other than those specifically provided for above, any payments not specified above made to the partners, members, other underlying ownership entities or individuals, and any of their related parties, including but not limited to other or additional asset management fees, incentive fees, performance fees, owner's representative, compliance management, consulting, or oversight fees may only be paid from Surplus Cash remaining after payment on the City, loan.

² Surplus Cash is also varyingly referred to as – cash flow, residual cash flow, residual receipts – for purposes of this document, shall generally have the same meaning.

In addition, the City will generally agree to defer annual payments on the AHL Loan until the **earlier** of i) 12 years from the date upon which the project is placed in service or ii) the point at which cumulative distributions of Surplus Cash are equal to a project's deferred developer fee as approved by the City as of the final closing and cost certification. In all cases, the deferral period will be determined based on cumulative Surplus Cash distributions **regardless of how any items described above as payable only from Surplus Cash are characterized within an owner's operating or partnership agreement**. As way of example, inasmuch as an owner's partnership agreement requires some or all cash flows to be distributed to the investor for any tax credit adjusters or investor loans not specifically anticipated in the project's financing plan, those distributions will still be counted toward the cumulative Surplus Cash distributions for purposes of any deferral period on the City's loan.

Further, any identity of interest costs (e.g. use of a related party management company, vendor, or the like) included within the Project's annual operating budget must be disclosed and approved by the City as necessary and reasonable.

D. Guarantees

The City will require joint and several corporate guarantees from the underlying individual and corporate owners of the general partner(s), member(s), or other controlling entities of the Owner, and from any other guarantors required by the other financing sources investing in the Project.

Required guarantees will include:

1. A guaranty of project completion and initial funding of reserves;
2. A guaranty of replacement reserve deposits; and
3. A guaranty for full and prompt payment of any loss, damage, liability, action, cause of action, cost, or expense incurred by City as a result of, and to the extent of, i) fraud or material gross misrepresentation, ii) intentional bad faith waste, iii) losses resulting from Owner/Developer's failure to properly maintain insurance, iv) gross misappropriation of any of the rents, security deposits, loan proceeds, insurance proceeds, condemnation awards, or any other proceeds derived from the collateral security; and/or v) unauthorized disbursements of surplus cash.

E. Declaration of Restrictive Covenants

Each AHL-funded project must maintain restrictions and covenants running with the land enforcing City guidelines, as applicable. The Declaration of Restrictive Covenants will be separately recorded and will remain in place for the 55-year period of affordability even if the AHL program loan is prepaid prior to that date. Among other items, the Declaration of Restrictive Covenants will address:

- Restrictions on the transfer of title to the property or underlying ownership interests in the property owner;
- Restrictions on further encumbrances on the Property without the City's prior permission;
- Operational and performance requirements, including maintenance of various reserves, restrictions on the distributions of surplus cash, approval of property management, and insurance expectations;

- Provisions to enforce ongoing requirements for project compliance through the period of affordability, including:
 - The length of the period of affordability;
 - Applicable income and rent restrictions;
 - Property standards to be enforced;
 - Marketing and leasing requirements; and
 - Recordkeeping and reporting requirements.

While the City's AHL program loan(s) will generally be subordinate to conventional debt, the ***AHL Declaration of Restrictive Covenants must be recorded senior to all foreclosable liens*** associated with the project financing, including any loans senior to the City's AHL program loan, and structured to survive any foreclosure by a senior lien. The AHL covenant may be recorded junior to any similar restrictions related to federal funding, LIHTC, or other public funding.

F. AHL Agreement

In addition to any financing documents, owners of AHL-financed projects must sign an AHL Agreement with the City. The Agreement will identify requirements for compliance with City's Rental Housing Program and will remain in effect in the event of any prepayment of the AHL program loan.

4. Underwriting & Subsidy Layering Reviews

A. Project Underwriting Standards

The City anticipates that in most cases, projects seeking AHL funding will be seeking awards of federal LIHTC as administered by CTCAC. In general, for administrative efficiency, the City anticipates using underwriting standards consistent with those adopted by CTCAC. Further, the City expects to align most affordability requirements with those of the LIHTC program (e.g., the definition of and processes for verifying tenant income, the calculation of rent limits, determination of utility allowances, etc.). However, in all cases, the City reserves the right to impose more restrictive underwriting or compliance requirements based upon its assessment of risk within a given project or specific policy goals outlined in these guidelines or within a particular NOFA. Insomuch as an applicant identifies disconnects between any of the specific underwriting, affordability, or other requirements outlined herein, it is their responsibility to discuss those with the City prior to submitting an application and seek any needed clarification.

Market Study. For all AHL project applications the City will require the submission of a professionally prepared market study meeting the ***market study*** requirements of the CTCAC. If more than 12 months old at the time of closing, the City may require an updated market study. Proposed rent levels must be supported by the applicant's market study and within applicable regulatory limits.

Developer/Guarantor Financial Capacity. Collectively and on an unduplicated basis, guarantor(s) must demonstrate minimum financial capacity as follows:

- Minimum liquidity (current assets less current liabilities) of at least the greater of \$1M or 5% of the total development costs of all pipeline projects (i.e., projects for which initial funding awards have been issued, that are under construction or in lease-up/stabilization, and for which permanent loan conversion has not yet occurred).
- Minimum net worth of the greater of \$5M or 10% of the total development costs of all pipeline projects.

All applications must include the three (3) most recent audited annual financial statements and current (less than 90 days) interim financial statements of all developer(s), underlying ownership entities, guarantors, and, in the case of rehabilitation, the project, as applicable, and will be subject to City's evaluation of fiscal soundness. For entities that are not audited, the City may, in its discretion, accept CPA reviewed financial statements. In the case of individual guarantors, current personal financial statements (less than 90 days) and three (3) years of individual tax returns are required.

Vacancy factor of at least 7% for family (i.e., not age-restricted) developments and at least 5% for senior (i.e., age-restricted) developments, unless the third-party market study indicates a higher vacancy factor is needed. For family projects where substantially all units are supported by project-based rental assistance, a 5% vacancy rate will be permitted.

Inflation factors. In general alignment with CTCAC guidelines, City staff will use a maximum inflation factor of 2.5% for all sources of income and a minimum inflation factor of 3.5% for all operating expenses and reserve deposits.

All AHL Program funded projects must maintain a **Debt Coverage Ratio** ("DCR") of at least 1.15 for at least 20 years on all amortized, must-pay debt. In some cases, for projects with small levels of mortgage debt or where long-term cash flow projections suggest declining annual cash flows, this may require a higher initial DCR but generally not greater than 1.25 for year 1. The City reserves the right, during the affordability period or any extended commitment period, to disapprove or reduce proposed rent increases for projects with actual debt coverage ratios of more than 1.35.

Operating Margin. In addition to considering DCR, the City will review the operating margin (cash flow cash divided by the sum of operating expenses and replacement reserve deposits). The operating margin must remain at or above 7% for the period of affordability. Like the DCR standards above, if operating margins exceed 10%, the City may require the project to take on additional amortizing debt or, following project completion, may disapprove or reduce proposed rent increases.

Operating Costs. Proposals must include justification of operating costs that includes a comparison to similar projects in the local market. Whenever possible, comparable properties should be operated by the proposed management company. The City may establish minimum annual per unit operating costs as part of a NOFA, generally in alignment with any published CTCAC standard.

Projects must include a **capitalized operating reserve** equal to three (3) months of underwritten operating

expenses, amortizing debt service, and required reserve deposits. If drawn, the operating reserve must be replenished prior to distributions of Surplus Cash. The operating reserve is intended to protect against unplanned operating deficits. If the City's underwriting projections anticipate deficits within the applicable affordability period, a separate **operating deficit reserve** must be capitalized as well.

To substantiate **LIHTC equity pricing**, if applicable, applicants must submit documentation (e.g., a term sheet or LOI) indicating that a syndicator or investor has reviewed the proposal and indicated preliminary pricing along with their interest in the project.

Pre-conversion NOI from project operations prior to the conversion of construction to permanent financing must be shown as a source of income in the applicants proforma using a factor of 75%.

Other Financing. Applicants must provide the amounts and terms for the construction financing, permanent financing, and if applicable, owner equity information. ***Amortizing permanent financing that will be senior to the City's AHL Program loan must have a term of at least 15 years.***

Deferred Developer Fees. It is common for projects to include deferred developer fees as a financing source. The City will generally require:

- That following the initial application to the City:
 - The level of deferred developer fee *may not be reduced* (in nominal dollar terms) unless the City's underwriting determines that the deferred fee cannot be retired within 15 years. In the event City underwriting identifies net cost reductions, increases in other funding sources, or other changes that result in a net reduction of the "gap" needed for the project, the City's AHL Program award will be reduced accordingly;
 - In the case of projects with 9% LIHTC, the gross Developer Fee *may not be increased*; and
 - In the case of projects with 4% LIHTC, any increase in the gross Developer Fee *must be offset with a corresponding increase in the deferred developer fee*;
- That any net savings (or increased funding sources including but not limited to upward adjusters for tax credit equity) at project completion and cost certification will be used in equal parts to reduce the deferred developer fee and the City's permanent loan. In the event savings are sufficient to eliminate the deferred fee in this manner, any remaining net savings will be used to further reduce the City's loan, or in the sole discretion of the City, to increase the operating or replacement reserves; and
- The deferred fee to be structured as an unsecured loan subordinate in priority to the City's lien; and
- Insomuch as payments on the City loan are deferred prior to the retirement of the deferred fee, the deferred fee must ***carry no interest***.

B. Proforma Requirements

Applicants ***must submit an unlocked proforma***, containing all underlying formulas, in a Microsoft Excel

format as a part of their application. The proforma must, at minimum, include:

- An itemized breakdown of units by bedroom size, square footage, income restriction, and both gross and net rent levels (i.e., net rents are those actually charged after adjusting rents for tenant paid utilities);
- Operating cost assumptions should be itemized and show costs on both a total development and per unit basis;
- Total development costs showing breakdowns by those included in LIHTC basis and identifying which specific line items the applicant proposes to use AHL funds towards.
 - In particular, the development costs should separately itemize the hard costs of any stand-alone accessory buildings (including leasing offices, community buildings, laundry facilities, free-standing garages or carports, or maintenance buildings), off-site infrastructure costs, and organizational costs such as partnership or syndication expenses associated with establishing the ownership entity and/or equity investment; FF&E, start-up costs and capitalized reserves.
- For projects using LIHTCs, net tax credit equity projections should be supported by calculations clearly showing eligible basis, any basis boost, actual credit sought (i.e., if limited by the state QAP or competitive factors), and anticipated pricing;
- Construction and stabilization period cash flows, showing the timing of sources and uses prior to conversion to permanent debt, including but not limited to the specific timing of equity installments;
- Projections of unit delivery and lease up estimating the need for any initial lease up reserve (prior to break even operations) and the availability of pre-conversion net operating income available as a development source; and
- At least a 20-year operating projection showing inflation assumptions for all revenues and expenses, including increases in replacement reserve funding, and modeling the distribution of surplus cash/cash flow (e.g., toward deferred fees, payments due the City, and any “waterfall” of distributions anticipated by the operating/partnership agreement.

Failure to provide an adequate proforma may result in increased underwriting costs due from the applicant.

C. City Fees

Any NOFA issued by the City will include an allowance for the City’s costs associated with reviewing the application for funding, underwriting the project, closing the transaction, and monitoring performance during the construction and stabilization period. These may include but are not limited to third-party consulting, legal, or inspection costs and direct staff costs associated with reviewing, processing, and monitoring award of funds to a project. Following the issuance of any preliminary award, applicants will be responsible for all such City costs whether or not the transaction ultimately closes.

D. Cost Limitations

All project costs must be reasonable and necessary whether directly paid with AHL Program funding or another source. The City reserves the right to review any line-item cost to ensure that both itemized and total project costs are not excessive. Additionally, AHL funded projects will be subject to the following specific cost limitations:

- For projects utilizing LIHTC, the maximum developer fee may be calculated pursuant to the QAP. In all cases, however, consultant fees and any interest on predevelopment financing are payable only from proceeds of the developer fee.
- For LIHTC developments, developers shall defer the maximum developer fee allowable under tax law and LIHTC regulations and, inasmuch as payments on the City loan are deferred, the deferred developer fee shall bear no interest.
- Maximum allowable builder/general contractor General Requirements, Overhead, and Profit are 6%/2%/6%, respectively. The builder line-item percentages are calculated on the construction contract price which cannot include construction contingency. If change orders use the contingency for construction costs, the same percentages for builder line items apply.
- When there is an identity of interest between the developer/owner and the builder/general contractor, in addition to the fee limits stated above, the combined balance of developer fee, general requirements, overhead, and profit may not exceed 20% of the total development cost less reserves and start-up costs and the developer fee, general requirements, overhead, and profit themselves.³
- Generally, Architectural, including Engineering fees, may not exceed 7% of total project hard costs (excluding builder's fee line items) unless the City has approved a larger fee (e.g., in response to specific project characteristics such as a requirement for historic rehabilitation or unusual site conditions requiring additional engineering).
- Acquisition costs may not exceed the lesser of the appraised value of a property, the purchase price negotiated with an arms-length seller, or the cost basis of an identity of interest seller.

E. Other Public Funding Sources

Owners must disclose all other commitments for funding with the initial AHL Program application to the City at the time of application and upon receiving any additional commitments of funding. Using its underwriting criteria, the City will assess the project and may require changes to the transaction to ensure that cash flows to the owner/developer are not excessive. Changes may include reductions of the AHL Program award, reductions in the rents being charged to tenants, requirements that excess cash flow is deposited to project reserves, or increased annual payments due on the AHL Program loan.

The City may consider adjusting its underwriting in consultation with other funders to the project. However, the City retains, at its sole discretion, the right to determine whether to accept alternative

³ Generally, the City considers there to be an identity of interest concern when the owner or developer is an affiliate of, or related party to, the builder/general contractor.

standards.

5. Project Funding Requirements

A. Eligibility Criteria

I. Eligible Applicants

Applications are accepted from non-profit and for-profit housing corporations, joint ventures, limited liability companies, and partnerships. In general, applicants must have previous experience owning affordable housing projects or partner with an entity that does have the required experience.

II. Project Location

Projects must be located in the City of Folsom. The City will encourage sites not adjacent to existing regulated affordable housing. In addition, preference may be considered for development of sites identified as being appropriate for affordable housing in the Housing Element, or developments that meet specific needs outlined in a given NOFA.

III. Project Types

Funds will be provided for acquisition, new construction, and rehabilitation of multifamily residential rental projects. While the City will entertain any proposals meeting its criteria (e.g., small-scale and/or transitional housing projects), in practice most projects will also require other public investment to be economically feasible (i.e., large-scale multifamily projects with LIHTC). Within a given NOFA, the City may include scoring preferences for projects meeting certain criteria (e.g., senior, large family units, deep income targeting, special needs housing, etc.).

IV. Funding Parameters

Typically, the City will also establish a maximum cap on its investment in a single development. Such a limit will be based on the availability of funding and other City priorities and will be addressed in any NOFA issued by the City.

B. Eligible Costs

I. General

Subject to any other limitations based on state law, the City will allow AHL funds to be used for any project cost otherwise included in the City-approved project budget. In all cases, any specific cost funded by the City as well as all project costs must be reasonable and properly allocable to the project.

II. City Project-Related Soft Costs and ongoing Monitoring Fee

The City will include, as project costs, its internal soft costs specifically attributable to an AHL funded project. These may include consulting, legal, inspection, and staff costs associated with reviewing, processing, and overseeing the award of funds to the project. Within any NOFA, the City will provide a

budget allowance for “City Due Diligence & Legal Costs” to be included in the project’s total development costs.

III. Cost Reasonableness

All project costs must be reasonable, whether or not paid directly with AHL funds. The City will review all project costs, including hard and soft costs, to evaluate their reasonableness and may, at its option, require applicants to obtain additional quotes, bids, or estimates of costs.

Acquisition costs must be supported by an independent appraisal of the property. Appraisals must be completed by an MAI certified appraiser, licensed to do business in California. The appraisal must meet USPAP standards. Acquisition costs exceeding the appraised value of the property will be ineligible for AHL funding. When a project’s sources include HUD funding, appraisal methodologies required by federal authorities, inasmuch as they are more proscriptive, will apply.

In general, to avoid unnecessary duplication and for administrative ease, the City anticipates relying on various third-party reports (including appraisals and A&E plan and cost reviews) ordered by or certified to other sources of project financing. In all cases, however, the City reserves the right to require an applicant, at its own cost, to provide third-party reports separately from those obtained by or for other financing sources and/or specifically certified to the City. These may include but are not necessarily limited to market studies, appraisals, environmental reports, and/or plan and cost reviews.

Inasmuch as it may use third-party reports initially prepared for other project funders, the City or its representatives must be provided reasonable time to review the information, analysis and conclusions therein and, as necessary, permitted access to the professionals preparing such reports. In addition, the City’s staff, or its agents, must be allowed access to the property as necessary to evaluate the cost projections associated with a project’s plans and specifications. Applications may be determined ineligible if access is not granted or costs are determined to be unreasonable.

IV. Identity of Interest

Applicants must disclose any identity of interest situations that may occur when contracting with related parties during either the development (e.g., related-party general contractor) or ongoing operation (e.g., affiliated property management company) of the project. This includes any identity of interest with the seller of the property. The City must approve the use of any identity of interest contractor, service provider, supplier, or vender and reserves the right to withdraw approval for cause upon notice to the owner.

C. Property Standards

To meet AHL program and City goals, all projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

- Construction must meet all applicable local building and fire codes (including related electrical,

mechanical, and plumbing codes).

- If not otherwise required by another funding source, notwithstanding the AHL is not federally funded, the City will require that all projects meet the federal standards associated with Section 504 and the associated Uniform Federal Accessibility Standards (“UFAS”) requirements. New construction or substantial rehabilitation projects with five or more total units must provide 5% of the project’s units (but not less than one) for physically disabled occupants and another 2% of units (but not less than one) designed to be accessible to those with visual or hearing impairments.
- “Covered multifamily dwellings,” as defined at 24 CFR 100.201, must also meet the design and construction requirements required by the Fair Housing Act as outlined in 24 CFR 100.205.

D. Unit Allocation

In the case of mixed-income projects that include a market rate component, in no case may the sum of the City’s funding, along with other public funding such as that from HOME, CDBG, the national Housing Trust Fund (“HTF”), etc. exceed the project’s “applicable fraction” for purposes of LIHTC.

In general, the City expects to provide additional consideration to projects that provide a higher percentage of deeply income-targeted units.

E. Income and Rent Restrictions

Affordable units in City-assisted projects will be income and rent restricted in the same manner as units designated as LIHTC units. A specific matrix of income restrictions defined by the percentage of AMI will be applied, with units at or below 80% AMI being counted as “affordable.” When combined with other federal funding sources, the City may consider alternative definitions of income and rent limits for the purpose of aligning restrictions to another public source.

In general, the City expects to defer to annual approvals of rent schedules and utility allowances to other public funders or oversight agencies, especially CTCAC. Owners will be expected to provide copies to the City concurrently with required submissions to any other oversight agency. Owners must also provide copies of approvals received from other public oversight agencies. The City reserves the right, as necessary (for example, following any determination that an owner has failed to comply with City requirements) to require affirmative City approvals of rent and/or utility schedules.

I. Income Limits

Income limits will be set based upon HUD-published Multifamily Tax Subsidy Program (“MTSP”) limits. The MTSP limits establish income limits for LIHTC and form the basis of the rent limits. They are updated annually, and projects will be required to always use the most current limits published by HUD.

II. Rent Limits

Consistent with LIHTC requirements, rents on affordable units may not exceed 30% of the monthly income of a household at the identified income level, using HUD’s methodology that assumes one and one-half

persons per bedroom (except for efficiency units which are based on a one-person household).

For all AHL funded projects, the owner (or property management agent) must submit the project's rent schedule on an annual basis, including utility allowances and any tenant fees as described in the sections below. In most cases, the City anticipates deferring to annual rent approvals by other public funders (e.g., CTCAC, CDLAC).

III. Utility Allowances

Rent limits are **gross** rent limits. The actual rent collected from a tenant must be adjusted considering an allowance for tenant paid utilities. The City encourages the use of project-specific methods of determining the utility allowance, but any method allowed by the LIHTC program may be used by the owner. The City anticipates deferring to annual approvals of the UA by other public funders (e.g., CTCAC, CDLAC).

IV. Prohibition on Certain Fees to Tenants

AHL program participants (i.e., owners) may not charge mandatory fees in addition to rent. Specifically, rental project owners may not charge tenants fees that are not customarily charged to tenants of rental housing (e.g., laundry room access fees). However, owners may charge fees approved by the City or other public funders for the following:

- Reasonable application fees to prospective tenants;⁴
- Fees or penalties related to the late payment of rent, non-sufficient funds or returned checks, or the like provided such fees are determined by the City to be customary for rental housing projects in the area and not excessive;
- Parking fees to tenants only if such fees are determined by the City, in its sole discretion, to be customary for rental housing projects in the neighborhood (that it is common for even market rate projects not to provide a parking space for each unit); and
- Fees for optional services such as supportive services for special needs tenants or general services such as bus transportation or meals, as long as the services are voluntary and fees are charged only for services provided.

IV. Income Verification

For purposes of income restrictions, projects shall use the definition of "annual income" from 24 CFR 5.609 for determining income eligibility. Prior to signing a lease, income must be verified for all new tenants with documentation otherwise acceptable under LIHTC requirements. On an annual basis thereafter, income of renewing tenants must be re-evaluated as required by the LIHTC program.

V. Rent Adjustments

HUD publishes MTSP Income Limits on an annual basis. Unless shorter notice is required (but not if shorter

⁴ "Nominal" application fees only for the purpose of discouraging frivolous applications. Application fees are not intended to cover the cost of processing an application and should not be set with that in mind.

notice is merely permitted), the rent for in-place tenants may only be increased with lease renewal and upon no less than 60 days' written notice to renewing tenants. Further, except for tenants whose incomes have increased beyond the applicable income limit for their unit, the year-on-year increase in rent for any renewing tenant may not exceed 5%, absent specific prior approval from the City.

For tenants whose incomes have increased beyond 80% AMI, the City will expect owners to take steps to replace those units with the next available market rate unit in the project (if any) while limiting any rent increase to the over-income tenant to a maximum of 30% of that tenant's household income.

F. Environmental Requirements

In general, the City expects that all projects will fully comply with the requirements of the California Environmental Quality Act ("CEQA"). Applicants must provide a Phase I Environmental Assessment to the City along with any further assessments, testing, or other environmental reports. Inasmuch as environmental concerns are identified, they must be mitigated to the City's satisfaction in order to receive AHL program funding. This may include various clean-up activities or specific design or construction elements to protect occupants (e.g., vapor barriers and/or air exchange systems). If the City determines that a given site's environmental risks cannot be adequately mitigated, it may rescind any preliminary award of AHL program funding. Additionally, the City will not fund any project in a 100-year flood zone.

G. Other Requirements

I. Nondiscrimination and Equal Opportunity

In addition to being the law, it is the City's policy that all projects comply with all applicable fair housing and equal opportunity statutes, laws, ordinances, and/or regulations, including but not limited to:

- The requirements of the Fair Housing Act (42 U.S.C. 3601-20) including prohibitions against discrimination or disparate treatment on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, and familial status and applicable California statutes which prohibit discrimination on the basis of marital status, military/veteran status, political affiliation, and status as victim of domestic violence, sexual assault, or stalking;
- The prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing Regulations at 24 CFR Part 146; and
- The requirements that owners make reasonable accommodations in order to afford a person with a disability equal opportunity to lease and occupy a unit in the project as required by the California Fair Employment and Housing Act (FEHA) or, as may be applicable, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

II. Relocation and Displacement

In general, the City discourages projects that will result in the permanent displacement of existing tenants. Inasmuch as a project will result in the temporary or permanent relocation of existing tenants, applicants

will be expected to provide benefits which are substantially similar to those provided under the federal Uniform Relocation Act (“URA”) to federally funded projects even if the project is not, due to another source, already specifically subject to these requirements.

III. Prevailing Wages

In general, the City does not expect the receipt of an AHL program loan to require the payment of prevailing wages. However, applicants are responsible for carefully assessing whether other project funding sources require compliance with federal (e.g., Davis-Bacon) or state prevailing wage or related labor standards compliance.

IV. Excluded Parties

The City will not fund projects owned, developed, or otherwise sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal or state awards. Nor may the owner contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded.

The System for Award Management (“SAM”) database should be used by applicants to confirm that development team members are not excluded. The SAM database is available at www.sam.gov.

6. Ongoing Project Requirements

At all times during the term of the AHL program loan or for an affordability period of 55 years, whichever is longer, AHL projects are subject to ongoing monitoring activities to be coordinated by the City and/or any third-party designee assigned by the City, in the City’s sole discretion. During such time, the project must continue to comply with applicable income and rent restrictions, be maintained in compliance with all applicable federal, state, or local codes or regulations related to the physical condition of the property and otherwise meet performance requirements outlined in the project’s AHL Agreement with the City (including any other financing documents or regulatory or use restrictions).

A. Marketing and Leasing

The owner/developer must establish a written tenant selection plan outlining any criteria other than income that tenants must meet to be approved for residency as well as any preferences or limitations that will be used to select applicants from the project’s waiting list. Owners may not reject an applicant based on that household’s receipt of a Housing Choice Voucher or other similar form of publicly funded tenant-based rental assistance. The City requires that the owner (or owner’s agent) provide written notification to any rejected applicant of the reason for their rejection.

Leases between the tenant and owner shall be for one year, unless by mutual agreement between the tenant and the owner.

B. Reporting and Recordkeeping

To allow effective oversight of funded projects and document compliance with applicable AHL program requirements, all projects must submit periodic reports to the City. In most cases the City expects to accept reports made in the format required by and submitted to other public funders or oversight agencies (e.g., CTCAC). However, the City reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to City policy. Additionally, the City reserves the right to require additional or more frequent reporting for projects with compliance deficiencies. In general, reports will be accepted via email.

- Owners may be required to report quarterly during the development phase and lease-up phase. Quarterly reports will be due on the 15th of the month following the end of the prior quarter (e.g., by April 15th reports on the first quarter are due).
- Owners must submit any annual reports due to other public oversight agencies (e.g., CTCAC, the housing authority, etc.) to the City. In most cases the City expects such reports will be adequate for its purposes, but upon request by the City owners are required to provide any additional performance information the City may reasonably require. By way of illustration, this may include occupancy reports (showing turnover and management of the unit mix), current rent roles, utility allowance documentation, and examples of marketing materials.
- All AHL funded projects are required to submit annual operating budgets to the City including comparisons against trailing 12-month budget and actuals. Additionally, all projects will be required to submit an audit prepared by an independent Certified Public Accountant within 180 days of the end of its fiscal year. For small-scale projects (generally defined to be projects with fewer than 20 total units not involving LIHTC) where the cost of a project-specific audit is deemed by the City to be burdensome, the City may accept a statement of financial condition with prior approval by the City's Finance Director.
- Within 10 days of receipt, owners must submit to the City copies of any monitoring reports, findings, 8823s, inspection reports or deficiency notices, or other similar documents issued by other public oversight authorities including but not limited to CTCAC or any other similar state agency; the provider of any HOME, HTF, or federal financing; and the Sacramento Housing and Redevelopment Agency (including as the provider of either project or tenant based vouchers or other financing).

In all cases, the City may require additional and/or more frequent reporting due to concerns identified whether from reports submitted to the City or otherwise (e.g., from public complaints, media, information from other public agencies or City departments, etc.).

Owners shall allow the City, all other pertinent federal or state agencies, or their designated representatives the right to inspect records and property.

C. Capital Needs Assessment

The City may periodically require owners to obtain a capital needs assessment ("CNA" – sometimes also

referred to as a physical needs assessment “PNA”) prepared by an independent third-party architect, engineer, or other qualified firm approved by the City. Such CNAs shall be used for the purposes of determining the adequacy of the Replacement Reserve, considering its existing balance, planned deposits, and anticipated future capital replacement costs for the project.

If the CNA indicates the Replacement Reserve is not sufficient to address anticipated capital costs during the period of affordability, the owner must, at the City’s option, either make an additional deposit or increase its annual deposits sufficient to meet any underfunding. If an additional deposit is required by the City, the owner (or the guarantors) must replenish the Replacement Reserve Account within six months.

In general, the City anticipates requiring a CNA eight (8) years after a project has been placed in service and every fifth (5th) year thereafter. However, the City reserves the right, for cause, to require an additional CNA outside of this general cycle (e.g., following significant damage due to a casualty event, if components are regularly failing prior to their expected useful life, etc.).

D. Conflicts of Interest and Identities of Interest

To maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided.

- Developers and owners with employees, family members, consultants, or agents that are otherwise eligible to occupy AHL-funded units must receive approval from the City before entering into a lease with AHL eligible employees, family members, consultants, or agents.
- As noted earlier, all identity of interest relationships with contractors, service providers, suppliers, or vendors must be disclosed to and approved by the City.

7. Construction Process

A. City Construction Inspections

In addition to any City inspections related to a project’s building or other related permits, Owners will be required to provide copies of consolidated monthly draw requests, including supporting documentation, showing the sources and uses of funds during the construction period. Owner must provide reasonable notice of any scheduled draw inspections during the construction period. Even when not disbursing toward a specific draw, the City will have the right to participate in all draw reviews and conduct inspections to ensure that the project is progressing and that work completed is consistent with all applicable AHL Program requirements.

B. Drawing Funds

The City’s AHL Program loan is intended as construction and/or permanent financing. Proceeds of the AHL Program loan will only be released as reimbursement for eligible project costs.

I. Conditions of Final Disbursement

In addition to the requirements set forth above, the City will hold back ten percent 10% of the AHL proceeds until completion of the Project, including all landscape requirements and offsite utilities and streets and correction of defects in workmanship and/or materials and the following:

- A certificate of occupancy, if applicable, or a final approved construction report from the City's Community Development Department for the Project.
- Evidence satisfactory to the City that the Project has been completed lien free and substantially in accordance with the plans and specifications.
- Review and acceptance of the cost certification.
- Such other supporting evidence as may be requested by the City or its agent to substantiate all payments which are to be made out of the final disbursement and/or to substantiate all payments then made with respect to the Project.
- A lease-up report showing the demographics of tenants at initial lease up.
- Achievement of stabilized occupancy and conversion to permanent financing.

II. Limitations on Draw Requests

Within any NOFA, the City may specify the draw schedule in the form of controlled disbursements. A typical disbursement schedule may include the following milestones:

1. 40% upon the close of construction financing.
2. 30% upon certification by the City's Building Official that framing inspections for all buildings are complete.
3. 20% upon issuance of final Certificates of Occupancy for all buildings.
4. 10% upon satisfaction that all required documentation for final disbursement has been submitted and approved.

8. Monitoring During Affordability Period

As noted in Sections 5 and 6, the City generally expects to Following project closeout, the City and/or any third-party designee assigned by the City, in the City's sole discretion, may monitor the project for ongoing compliance with AHL program requirements, including but not limited to income and rent restrictions, property standards, tenant protections, and marketing and fair housing requirements. In addition to periodic reporting outlined herein, the City and/or any third-party designee will conduct on-site monitoring visits. The purpose of these visits will include, at minimum, reviews of project records and inspection of the premises including common areas and residential units.

In most cases, the City may conduct such reviews annually. However, the City reserves the right to conduct any reviews or site visits more or less frequently based on changes to City policy or based on evidence of compliance deficiencies.

9. Exceptions

The City reserves all rights to make exceptions to the Guidelines and/or deny any affordable housing loan request if doing so would further the purpose and intent of the City's Affordable Housing Loan Program.