EFFECTIVE DATE: 11-02-07

Mayor's Office of Housing
Policy on Development Fees For Tax Credit Projects

Background

The primary goals of this developer fee policy for low-income housing tax credit projects in San Francisco are: (1) to fairly compensate developers of such projects for managing the overall development of such projects; (2) to provide financial resources to enable developers to meet their financial obligations as general partner of a tax credit limited partnership; (3) to hold developers accountable for their performance while providing incentives for successful and timely completion of such developments; (4) to provide financial resources for successful developers to supplement their primary mission with other housing related and community development activities; and (5) to promote the long term sustainability of such organizations.

The Mayor's Office of Housing ("MOH") will permit housing developers to include development fees as part of an approved development budget for an eligible tax credit project receiving MOH capital funding. Approved developer fees will be earned based on a performance schedule agreed upon by MOH and the developer; and a portion of the budgeted developer fees shall be available to cover cost overruns associated with the project.

Definitions:

"Affordable housing" means rental housing affordable to households earning up to 60% of San Francisco median income adjusted solely for household size.

"Preservation of At-Risk affordable housing" means the acquisition and re-capitalization of housing with affordability restrictions threatened by expiration or termination with the intent to guarantee that the units will be retained for affordable housing for at least 55 years into the future and serve households with incomes not exceeding 60% of the respective household annual median income.

"Project close-out" means that all of the following conditions have been met: (1) all project construction or rehabilitation has been completed; (2) the borrower has submitted all documents, reports and forms as required by the Loan/Grant Agreement, including a copy of the 8609 report submitted to TCAC; (3) the City has reviewed and approved borrower's project completion reports and documents; and (4) 100% lease-up.

"Recapitalization Projects" are development activities involving the investment of new public capital that is used to maintain or improve the long-term habitability or affordability of existing non-profit owned affordable housing including extending the affordability restrictions for an additional 55 years.

"Site Acquisition" means escrow closing on purchase or execution of MOH-approved lease of development property.

"Substantial Rehabilitation" means the average hard construction cost per unit is at least $50,000 per unit.

"Units" means a complete apartment, a bedroom in the case of a group home residence, or a single room occupancy unit with new or preserved affordability restrictions of at least 55 years

Eligibility

Projects that are eligible for a developer fee include all MOH-funded projects that are financed in part through the Low-Income Housing Tax Credit Program.

The acquisition or transfer of an existing affordable housing project previously funded by MOH or the San Francisco Redevelopment Agency without substantial rehabilitation work and/or without an extension of the affordability term is not eligible for a developer fee.

Both non-profit and for-profit development corporations in good standing with the California Secretary of State are eligible for developer fees. If the developer is a limited equity partnership or limited liability corporation, it must include a nonprofit organization acting as co-managing general partner. The nonprofit owner or partner must be a 501(c)3 corporation with the provision of developing affordable housing as part of its Articles of Incorporation.

Maximum Allowable Developer Fees for 100% Newly Affordable and At-Risk Projects

The maximum allowable developer fee (the "Maximum Fee") for projects in which all units are newly affordable units shall be equal to the maximum developer fee allowed by the California Tax Credit Allocation Committee (CTCAC) for 9% tax credit projects (whether the project is using 9% or 4% tax credits) as may be modified by the CTCAC, regardless of the source of the fee. The Maximum Fee shall be comprised of a Project Management Fee and an At-Risk Fee.

Maximum Allowable Developer Fees for Recapitalization Projects

The maximum fee for Recapitalization Projects (the "Recapitalization Maximum Fee") shall not exceed twenty five percent (25%) of the Maximum Fee, all of which shall be considered a Project Management Fee. In the event that a Recapitalization Project has less that the allowable tax credit basis, MOH will permit an increase in the Developer Fee on the condition that any Fee in excess of the Recapitalization Maximum Fee will be invested in the project. No At-Risk Fee will be allowed for Recapitalization Projects unless newly affordable units are being added to an existing affordable building as described below.

Project Management Fee

One-half of the Maximum Fee or the full Recapitalization Maximum Fee shall be paid as a Project Management Fee and disbursed according to the achievement of certain agreed upon development milestones to be negotiated on a project-by-project basis. However if the project is subject to developer fee caps by other funding sources such as the State Multifamily Housing

Program, then the maximum Project Management Fee permitted for such projects is One Million ($1,000,000).

FOR EXAMPLE: If the Maximum Fee is $2,000,000:

	% of Fee	Amount:
At Acquisition or closing of preconstruction financing from MOH:	15%	$150,000
During or at end of Predevelopment:	35%	$350,000
Interim payment – Submission of building/site permit application		
Interim payment – Submission of TCAC/CDLAC application		
Interim payment – Approval of gap financing		
During or at end of Construction:	35%	$350,000
Interim payment – completion of 50% of construction/ rehabilitation		
Interim payment – Temporary Certificate of Occupancy		
Interim payment – 95% lease-up		
At Project Close Out:	15%	$150,000
Total:		$1,000,000

At-Risk Fee

The remaining one-half of the Maximum Fee is at-risk for costs exceeding final approved budget at commitment of gap financing by MOH. For projects subject to developer fee caps by other funding sources, such as the State Multifamily Housing Program, then the maximum At Risk Fee permitted for such projects is Two Hundred Thousand ($200,000).

Recapitalization Projects are not eligible for the At-Risk Fee unless a) no developer fee has been received at any time by the owner or an affiliate of the owner for the units being re-capitalized; or b) the Recapitalization Project includes the addition of new affordable units to the building. In the event that new units are being added, the At-Risk Fee shall be equal to two times the percentage increase in total affordable units in the development times the Recapitalization Maximum Fee.

Waivers or Modifications of this Policy

The Citywide Affordable Housing Loan Committee may recommend waiver or modification of any portion of this policy when it determines that such waiver or modification is necessary to assure the project's feasibility. All such recommendations regarding implementation of this policy are subject to the Mayor's approval in his or her sole discretion.

If the source of the development fee is CDBG or HOME funds, the developer fee is considered to be program income for the respective funding program. The nonprofit developer shall provide an annual report to MOH on the use of such fees. In the event the nonprofit is a funding recipient of CDBG administrative funding, the use of the developer fees shall be included in the nonprofit's annual CDBG/OMB audit report as applicable.

Implementation of Policy

This policy applies to any development that has not received its gap financing commitment from MOH by the effective date of the Policy.