

Mayor's Office of Housing and Community Development
City and County of San Francisco



London N. Breed
Mayor

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Director

NOTICE REGARDING OPTION TO REMOVE CAPS ON DISTRIBUTIONS OF RESIDUAL RECEIPTS

JUNE 23, 2020

This notice represents an update to the notice dated February 21, 2020, and responds with new provisions to the impact of COVID-19 upon the affordable housing community.

The Mayor's Office of Housing and Community Development (MOHCD) will consider the modification of certain limits on distributions of excess project income (often defined as "Residual Receipts" or "Surplus Cash") to Owners of affordable housing projects that are subject to agreements under the administration of MOHCD ("Projects"). Beginning immediately Project owners may apply for a revision of the terms in the City's agreements to implement this change.

Background

The City and County of San Francisco (the "City"), through MOHCD and its predecessors, has financed or otherwise supported the development of affordable housing since the 1980s, using a variety of local and federal funding sources. Many of the financing, regulatory and ground lease agreements that have been entered into for this purpose have included limitations on the amount of excess Project income that a Project owner may retain as a distribution ("Owner's Residual Income").

Option to Apply for Removal of Caps

To facilitate the preservation of existing MOHCD-regulated affordable housing, and support the capacity of affordable housing Owners to effectively manage their Projects and fund capital needs, MOHCD will consider requests for the removal of certain caps on the Owner's Residual Income. For eligible Projects approved by MOHCD, the City will amend the existing legal agreements to remove these caps and instead allow for the Owner's Residual Income to be determined by [MOHCD's current Residual Receipts Policy](#), which took effect in 2016, and allows for 1/3 of Residual Receipts to be retained by the Project owner as a distribution.

Which Projects Can Apply?

Any Project that is currently subject to a City legal document that limits annual Owner distributions as described below or in some other way that is more restrictive than [MOHCD's current Residual Receipts Policy](#). This includes agreements originally executed by the former San Francisco Redevelopment Agency that have been assigned to and administered by MOHCD.

Please see below for examples of language that can be changed under this option:

- Language limiting the annual distribution as a percentage of Project Income:
 - ✓ Example: “...Borrower may receive *Distributions* in an aggregate maximum amount equal to TEN PERCENT (10%) of Project Income”
- Language that prohibits any distributions:
 - ✓ Example: “Maker agrees to utilize all “*Surplus Cash*” (as defined below) generated by the Project to pay principal and interest due hereunder...”
- Language imposing specific caps on the amount of allowable distributions:
 - ✓ Per-unit - Example: “...Borrower may retain a portion of *Residual Receipts* in an amount equal to the lesser of thirty-three percent (33%) or \$500 per Unit per year”
 - ✓ Specific dollar amounts - Example: “Developer may use *Surplus Cash* ... to pay an incentive management fee equal to a thirty-three percent portion of the *Surplus Cash* (to a maximum of \$50,000)”

Project owners should review City loan, regulatory agreements, ground leases, and/or promissory notes to find the above language or anything similar that governs distributions and surplus cash.

Applicants must be prepared to formally agree to satisfy MOHCD's current [Capital Needs Assessment Policy](#), including verification that replacement reserves are adequately funded.

This option to amend a loan or ground lease is only viable for Projects that are in full compliance with the terms of MOHCD agreements.

MOHCD will impose a [Proposal Review Fee](#) for each application that is processed.

How to Apply

For each Project seeking to exercise this option, the Project owner must prepare and submit the “[Distribution Cap Removal Request Application](#)”. This Excel Workbook consists of the following worksheets:

- General Information about the project.
- A list of MOHCD agreements and citations that contain any language imposing a limitation on the distribution of Residual Receipts and/or Surplus Cash.
- Excerpts from each section above.
- Tenant Paid Rent and Rental Assistance totals for CY 2020/FY 20-21.
- 1st Year/20-year operating budget using the Project's CY 2020/FY 20-21 projected budget as 1ST Year and including projected replacement reserve activity per the most recent Capital Needs Assessment (CNA), a copy of which must also be submitted with the application.

Deadlines

Email notification of intent to apply: **July 1, 2020**

Application for Ground Lease Amendment: **July 10, 2020**

Application for Loan Amendment: **July 31, 2020**

Project owners must submit applications for their Projects by one of the deadlines set forth above. No exceptions can be made for late applications.

If an application is submitted under a particular deadline and approved, the modifications will apply to the corresponding applicable Reporting Period and all subsequent periods in the term of the loan agreement or ground lease.

[COVID-19 Allowance](#): In recognition of the impact the COVID-19 pandemic has had on our affordable housing partners, the projects, and residents, MOHCD is allowing Owners to retain up to 2/3 of Residual Receipts for reporting years CY 2019/FY 2019-20 (instead of the 1/3 allowed by [MOHCD's current Residual Receipts Policy](#)). In addition, Owners may allocate the 1/3 of CY 2019/FY 2019-20 Residual Receipts that would otherwise be owed to MOHCD to other the Operating or Replacement Reserves of other projects suffering shortfalls due to Covid-19. The COVID-19 Allowance is subject to the approval of the application to remove Residual Receipts caps and the AMR submittal, which must include a detailed plan describing how these distributions will directly benefit and/or mitigate the COVID-19 financial impacts affecting residents.

Review and Approval Process

Once an application is submitted, the review and approval process is anticipated to consist of the following steps:

- Application will be reviewed to ensure that it is complete; incomplete applications will not be considered.
- Application and project compliance status will be reviewed to make a cursory viability determination; MOHCD will communicate with applicants within one week of submission whether the application is viable.
- Within approximately two weeks of submission, MOHCD staff will communicate to the applicant a proposed schedule for eligibility analysis with an outline of remaining analytical steps.
- Where needed, MOHCD staff may require revisions to the proposed budgets to ensure that the replacement reserves are adequately funded.
- If the analytical process exposes any unique contractual requirements, further negotiation may be necessary.
- Once the analysis is complete, MOHCD staff will provide the relevant legal templates for applicants to complete, and a proposed timeline for completing the document drafting work.
- MOHCD staff must process all applications for ground lease amendments and execute the amendments by approximately September 8, 2020, through a streamlined process with delegated approval from the Board of Supervisors.
- MOHCD staff will execute loan amendments on an extended schedule to be determined; such amendments may be made with delegated approval from the Citywide Affordable Housing Loan Committee.
- MOHCD will approve the Residual Receipts distributions only upon execution of amendments.
- Sponsors will submit two versions of Annual Monitoring Reports (AMR) for CY 2019/FY 2019-20 by the published extended deadlines: one AMR depicting Residual Receipts distributions pre-application and another illustrating distributions assuming approval of the application. AMRs will be approved upon completion of the amendments.
- The applicable Proposal Review Fee will be due within 30 days from execution of the amendment.

Please also note:

- After the above application deadlines have passed, MOHCD will accept and process applications on a rolling schedule to amend ground leases and loans for the purpose of removing Owner's Residual Income caps. Later applications, however, will not benefit from the COVID-19 Allowance.
- Projects with ground leases that were executed before 2005 will be subject to a subsequent amendment that will revise the ground lease terms, require an appraisal, and re-set the Residual Rent payments to the City. Where applicable, MOHCD staff will coordinate this on a case-by-case basis with Sponsors after the initial amendment described above.

Please submit your application and any questions about this process to Ricky Lam (ricky.lam@sfgov.org) who will connect you with the Asset Manager assigned to your Project.