

**MOHCD CASH OUT ACQUISITION/REHABILITATION,  
RESYNDICATION, AND REFINANCING POLICY**

*Update: June 19, 2020*

**I. BACKGROUND:**

This MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy (this “**Policy**”) governs the conditions under which a sponsor may take cash out from a MOHCD-regulated affordable housing development (“**Projects**”) through an acquisition/rehabilitation, resyndication, or refinancing that is subject to MOHCD’s consent under a City and County of San Francisco (“**City**”) ground lease, financial agreement, and/or other subsidy agreement (collectively, “**City Documents**”).

Between 2017-2020, the City, through MOHCD, will have contributed approximately \$1.2 billion in subsidies to build or preserve over 6,000 affordable housing units. MOHCD’s substantial subsidies (including “soft” predevelopment and gap loans at zero or below market interest rates repaid through surplus cash, grants, operating subsidies, land write-down, below market ground lease rent, forgiveness of residual rent, forgiveness of loans, subordination, and others) strengthen the social, physical, and economic infrastructure of San Francisco’s low-income neighborhoods and communities in need. Working with community-based organizations and affordable housing developers (collectively, “**Sponsor**”), MOHCD’s contribution of public resources has created an affordable housing portfolio (“**MOHCD Portfolio**”) exceeding 22,000 units.

In general, MOHCD allows a Sponsor to secure new loans for financing or refinancing the acquisition/rehabilitation of a Project, but only if MOHCD determines in its sole discretion that such financing/refinancing is necessary to ensure the viability of the Project. Under City Documents, a Sponsor must obtain MOHCD’s prior written consent for such new financing/refinancing, encumbrance of a leasehold estate, subordination of MOHCD’s existing liens, and/or prepayment of existing debt. Therefore, to ensure the financial viability and sustainability of a Project, a Sponsor is generally **not permitted** to obtain a loan in an amount that exceeds the amount necessary to acquire/rehabilitate a Project, which is commonly known as a “**Cash Out**.”

But for the City’s substantial contributions of public resources, and ongoing stewardship, the MOHCD Portfolio would not exist today, nor would individual projects within the MOHCD Portfolio support a cash out through an acquisition/rehabilitation, resyndication, or refinancing. In light of the City’s substantial prior subsidies and funding, and to support the preservation of properties in the MOHCD Portfolio, effective June 7, 2019 (“**Effective Date**”), MOHCD approved the Policy to establish criteria for a Sponsor to obtain MOHCD’s consent to waive the prohibition on a cash out. This Policy updates and replaces the Policy adopted on June 7, 2019 in its entirety.

**II. POLICY ON CASH OUT (UPDATED):**

This Policy applies to Projects subject to a City Ground Lease, or where the City has provided funding (i.e. Loans, Grants, LOSP, or other funding) of at least \$50,000 per restricted unit. This

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includes Projects where MOHCD has been assigned such agreements, as the successor housing agency, from the former Redevelopment Agency of the City and County of San Francisco.

If a Sponsor is obtaining a new loan for conducting an acquisition/rehabilitation, resyndication, or refinancing, and desires withdrawal of Cash Out from the loan proceeds (equity or acquisition Excess Proceeds as defined below), MOHCD will waive the prohibition of such Cash Out under the following conditions:

- (i) Sponsor complies with the general conditions set forth in Section IV below.
- (ii) Excess Proceeds is subject to a 50-50 split between the Sponsor and MOHCD to be paid on a pari passu basis. MOHCD's share of Excess Proceeds (MOHCD Payment as defined below) shall partially recapture the City's previous subsidy to the Project.

**"Excess Proceeds"** is defined as the remaining funds available after paying off and/or funding, as applicable, the senior financing, all MOHCD financing and ground rent, buying out the limited partner, rehabilitation/improvements, seller carry-back loan (if any), reserves, and other costs (such as transaction costs) approved by MOHCD. MOHCD will not restrict the Sponsor's use of its share of Excess Proceeds approved pursuant to this Policy. Notwithstanding the foregoing, this Policy does not modify any restrictions imposed by other government funding that govern a Sponsor's use of project income, program income, or cash out equity or acquisition proceeds, or in any way modify a Sponsor's obligation to comply with such restrictions. A Sponsor is solely responsible for ensuring compliance with any other government requirements and this Policy.

**"MOHCD Payment"** is defined as MOHCD's share of Excess Proceeds pursuant to this Policy. Such amount shall be paid at the close of escrow and documented through a consent agreement.

MOHCD's share of Excess Proceeds will be restricted to affordable housing purposes, utilized to provide critical funding to support the City's existing investments in affordable housing, and ensure the long-term viability of San Francisco's affordable housing stock. The MOHCD Payment shall be deployed across MOHCD's existing and successor financing programs that prioritize the preservation of the City's existing affordable housing portfolio (e.g. Existing Non-Profit Owned Rental Housing Capital Repairs).

### III. GOVERNING DOCUMENTS, POLICY AND REGULATIONS:

Cash out withdrawals of equity or acquisition proceeds from properties in MOHCD's Portfolio are highly regulated through various mechanisms, including, but not limited to:

- Transaction Documents:
  - Long-term affordability covenants which keep project income low and reduce available equity
  - Long-term asset management requirements requiring regular reinvestment into the physical needs of the properties
  - Loan Agreement provisions regarding property transfer rights

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- Secured Promissory Note provisions regarding prepayment privileges
- Contracts providing rental assistance
- Restrictions related to other funding sources (e.g. HCD, CDBG Program Income)
- Policy & Regulations:
  - Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy
  - Subordination Policy
  - Ground Lease Policy
  - Residual Receipts Policy
  - Operating Fee Policy
  - Developer Fee Policy for Tax Credit Projects
  - Multifamily Securities Program Manual
  - Other third-party restrictions (e.g. HCD, CDLAC & CTCAC Regulations)

### IV. GENERAL CONDITIONS:

MOHCD consent to waive the prohibition on Cash Out is subject to the Sponsor complying with the following general conditions:

- i. Long-term extension of the compliance term and affordability restrictions for a minimum of 55 years.
- ii. Demonstration to MOHCD's reasonable satisfaction that the proposed financing does not threaten the viability of the Project through the extended compliance term.
- iii. Demonstration of compliance with asset management requirements, including either completion of all capital repair needs or a capital repair expenditure plan that meets the building's physical needs.
- iv. Fully funded operating and replacement reserves.
- v. Full repayment of MOHCD financing (including principal and accrued interest), as applicable.
- vi. Full repayment of MOHCD accrued ground rent, as applicable; and
- vii. No event of default exists under the City Documents.

### V. WAIVERS:

Subject to MOHCD's review of supporting documentation, the Citywide Affordable Housing Loan Committee ("**Loan Committee**") may recommend to waive or modify any portion of the Policy for the purpose of ensuring project feasibility, maximizing affordability, and minimizing the use of public resources.

A Sponsor may also request an alternative to the 50-50 split of Excess Proceeds as follows:

#### A. Proportionality Waiver

MOHCD may consider a waiver to a 50-50 split of Excess Proceeds if the Sponsor can demonstrate that the Sponsor's equity investment (including cash contributions and parent company loans, "**Sponsor Funding**") in the Project is greater than 50% of the sum of i) total equity (excluding tax credit investment), and ii) subsidy contributed by the City (collectively, "**Total Funding**"). In the event the Sponsor has invested more than 50% of the Total Funding,

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the Sponsor may retain the percentage of the Excess Proceeds in proportion to the Sponsor's Funding, as illustrated below. Approval of the Proportionality Waiver is subject to MOHCD verification of the original development budget and additional documentation (e.g. final underwriting, audited financial statements, bank statements, loan documents, etc.) related to Sponsor Funding.

### 50-50 Split with Sponsor Funding equal to less than 50% of Total Funding

Sponsor Funding	MOHCD subsidy	Total Funding	Sponsor Funding %	Excess Proceeds	MOHCD Share of Excess Proceeds	Sponsor Share of Excess Proceeds
\$3,000,000	\$7,000,000	\$10,000,000	30%	\$6,000,000	\$3,000,000	\$3,000,000

### Proportional Waiver for Sponsor Funding equal to greater than 50% of Total Funding

Sponsor Funding	MOHCD subsidy	Total Funding	Sponsor Funding %	Excess Proceeds	MOHCD Share of Excess Proceeds	Sponsor Share of Excess Proceeds
\$7,000,000	\$3,000,000	\$10,000,000	70%	\$6,000,000	\$1,800,000	\$4,200,000

## B. Reinvestment Waiver

MOHCD may also consider waivers, subject to MOHCD's review of supporting documentation (described in **EXHIBIT A**), and approval of the Loan Committee, that result in an increased net public benefit (example in table below) to MOHCD's Portfolio, whereby a Sponsor commits to reinvest all Excess Proceeds into MOHCD-regulated properties within the Sponsor's affordable housing portfolio. Such requests must demonstrate that the proposed uses are strategically optimal investments, and be justified by recent Capital Needs Assessments ("**CNA**") approved by MOHCD, feasible underwriting, Sponsor capacity, and long-term cash flow projections.

Additional conditions and requirements for Reinvestment Waiver requests:

- i. Waiver requests approved by the Loan Committee may require additional City approvals.
- ii. Projects generating Excess Proceeds ("**Resource Properties**") and Projects where Excess Proceeds are reinvested ("**Receiver Properties**") must be specified. The proposed reinvestment plan, and any changes related to such Resource Properties or Receiver Properties is subject to MOHCD's approval.
- iii. Excess Proceeds may only be used at MOHCD approved Receiver Properties for actual rehab expenses (as opposed to refinancing, for example), with a minimum threshold cost of \$50,000 per unit. Eligible uses include hard costs, and certain soft costs, as applicable.
- iv. Sponsor must report the use of all Excess Proceeds to MOHCD annually, and MOHCD shall have the authority to monitor the use of Excess Proceeds on a more frequent basis.

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- v. Sponsor must execute a Promissory Note, or Notes, payable in five (5) years to MOHCD for 100% of the Excess Proceeds to be reinvested in Receiver Properties; each Promissory Note must be secured with a deed of trust against the Resource Property. The outstanding balance of the Promissory Note shall be reduced proportionately to the completion of the rehabilitation/improvements, and the deed of trust will be reconveyed after all the rehabilitation/improvements have been completed.
- vi. Rehabilitation/Improvements funded by Excess Proceeds must be completed within five (5) years of the execution of the Promissory Note, or unused Excess Proceeds will be due and payable upon maturity of the Note.
- vii. Sponsor’s Reinvestment Waiver request must include all the materials listed in **EXHIBIT A**.

<b>EXAMPLE REINVESTMENT WAIVER</b>	<b>50/50 Split</b>		<b>Waiver</b>	
<b>Sources</b>				
New Senior Loan		7,000,000		7,000,000
<b>Total Sources</b>		<b>7,000,000</b>		<b>7,000,000</b>
<b>Uses</b>				
Rehab		1,200,000		1,200,000
Repay Existing Senior Debt		1,450,000		1,450,000
Paydown MOHCD Accrued Ground Lease Rent		1,965,000		1,965,000
Payoff MOHCD debt		875,000		875,000
Excess Proceeds		1,510,000		1,510,000
<b>Total Uses</b>		<b>7,000,000</b>		<b>7,000,000</b>
MOHCD share of Excess Proceeds	50%	755,000	0%	-
Sponsor share of Excess Proceeds	50%	755,000	100%	1,510,000
Paydown MOHCD Accrued Ground Lease Rent		1,965,000		1,965,000
Payoff MOHCD debt		875,000		875,000
MOHCD Share of Excess Proceeds		755,000		-
<b>Total due to MOHCD</b>		<b>3,595,000</b>		<b>2,840,000</b>
Amount of Promissory Note to MOHCD		-		1,510,000
<b>Net public benefit to MOHCD Portfolio</b>		<b>3,595,000</b>		<b>4,350,000</b>

**VI. IMPLEMENTATION AND EFFECTIVE DATE:**

This Policy applies to any development in MOHCD’s Portfolio that is seeking a Cash Out on or after the Effective Date.

**EXHIBIT A**

Additional Materials Related to Reinvestment Waiver Requests

- Detailed recapitalization project narrative/proposal
- Portfolio-wide preservation strategy with rationale for the Resource Properties and Receiver Properties selected for the waiver request
- [Proposal Review Request Form](#) for each property
- Resource Properties-to-Receiver Properties flow chart
- Third-party CNAs for each property
- Preliminary title reports for each property
- [MOHCD Proformas](#) for each property – including 20-year cash flow analyses before and after use of Excess Proceeds
- Sources and uses chart including MOHCD debt/obligations on each property
- Refinancing debt and equity term sheets or letters of intent, as applicable
- Seismic report and rehab budgets for each property, as appropriate
- Project schedule for each property as well as for the overall multi-project plan
- Sponsor and staff capacity/assignments for each aspect of the proposed project(s)

MOHCD reserves the right to request additional materials as needed to evaluate waiver requests.