San Francisco Mayor's Office of Housing and Community Development
Department of Homelessness and Supportive Housing
Office of Community Investment and Infrastructure
Controller's Office of Public Finance

MEMORANDUM

DATE: OCTOBER 16, 2020

TO: CITYWIDE AFFORDABLE HOUSING LOAN COMMITTEE

FROM: MARA BLITZER, DIRECTOR OF HOUSING DEVELOPMENT

RE: **Update to MOHCD Policy on Development Fees for Tax Credit Projects**

1. Background – MOHCD's Principles Regarding Developer Fee

Developer fee (or "Fee") is an important part of all affordable housing development budgets. The Fee pays the developer (or development team) for the staffing and organizational costs of developing the project. Affordable housing projects can take multiple years to plan and then construct. In other words, it's a fee for a service provided. Additionally, developers often re-invest that Fee into future affordable housing projects, for example, by acquiring land.

While there would be no affordable housing developers without Developer Fee to support them, it is also important that MOHCD sets reasonable limits and expectations with respect to Developer Fee. MOHCD does this in a few ways. First, MOHCD restricts the amount of Fee a developer can receive on any given project (explained further below). Second, MOHCD sets Development Fee milestones so that a developer cannot earn the Fee until the performance milestone has been reached. Third, MOHCD designates a portion of the Fee as "At Risk." This means that if the developer runs out of money when constructing the project, it must use this portion of the Fee to pay for cost overruns.

While the Low-Income Housing Tax Credit (or "LIHTC" or "Tax Credit") program has its own Developer Fee caps, MOHCD further restricts some components of Developer Fee to ensure developer performance is achieved and so that surplus cash from project operations is also used to repay MOHCD loans. MOHCD loan payments are then used to fund future affordable housing projects.

Under the leadership of Mayor Breed, and in partnership with city and community leaders, MOHCD seeks to advance opportunities and improve programmatic outcomes for Black, Brown and low-income residents. As such, we are assessing programs, contracts, and procurements to ensure they advance the City's racial equity goals. We will be working closely with our partner organizations to monitor the impact of our investments. We will provide capacity building, clear information to partnering organizations, and create channels to give and receive feedback to ensure that all parties are aligned in the expectation to create an inclusive and equitable city where all residents have the opportunity to thrive.

2. This Request

This request is to update the MOHCD Policy on Development Fees for Tax Credit Projects (Effective July 15, 2016) (the "Developer Fee Policy" or "Policy") to 1) clarify a number of parts of the policy,

2) update certain parts of the policy to correspond with changes in Tax Credit and Tax Exempt Bond Regulations, and 3) respond to the changing landscape on how Non Cash-Out developer fee, in particular, is being viewed by the affordable housing industry. This memo will summarize the requested changes. Both clean and black-lined versions of the proposed updates can be found in Attachments A and B.

a. Maximum Total Fee (Section II):
    Proposed change: MOHCD Staff propose to remove the $4M maximum on Total Fee (which includes Cash Out and Non-Cash Out Fee). Instead, Staff propose to cap Total Fee based on the Tax Credit limits (currently, 15% of eligible basis).
    Rationale: The Policy retains caps on the amount of Cash-Out Developer Fee. This is the amount of fee that gets distributed to the development team (paid either from the development budget or from operations). However, MOHCD does not wish to cap the amount of Non Cash-Out Fee included in the Project budget beyond the existing Tax Credit limits. This is because the Non Cash-Out Fee is an important tool for generating more tax credit equity, and may reduce MOHCD's gap contribution. (More on this below in Item d.).

b. Clarifying the Components of Total Fee (Sections II.A. and II.B.):
    Proposed change: MOHCD Staff propose to clarify the Total Fee components by defining Cash-Out fee as either Base, Additional, or Deferred, and by defining Non Cash-Out Fee as either Deferred or GP Equity. The Base Fee maximum ($2.2M) is updated to align with the Technical Change to the Developer Fee Policy approved by Loan Committee in 2018.
    Rationale: These Fee components are included in the current Policy but are not as clearly defined. Staff proposes to further define Deferred Fee as either Cash-Out or Non Cash-Out to reflect changes in the way the Industry is viewing Non Cash-Out fee. (More on this below in Item d.). Only Cash-Out Deferred Fee is distributed to the development team, and that is capped in the same way by both the current and proposed Policy.

c. Updating Definition of Substantial Rehabilitation Projects (Section II.B.1):
    Proposed change: For tax credit projects that are not new construction, and are coming to MOHCD either for new funding or for approval to re-syndicate with existing MOHCD funding, Staff proposes to update the definition of Substantial Rehabilitation to projects with hard costs of at least $75,000/unit. Hard costs means Total Construction Costs as defined in the MOHCD Application.
    Rationale: The Tax Credit Program has signaled they will be increasing their current substantial rehabilitation definition from $40,000/unit. MOHCD's current definition is $50,000/unit. The MOHCD definition has not been increased in some time, and MOHCD staff recommend a higher definition than the Tax Credit program to account for the substantially higher construction costs in San Francisco. The purpose of this definition is to prevent developers from undertaking re-syndications of their projects that result in only minimal improvements that benefit residents, while still extracting the same amount of developer fee.

d. Bringing Non Cash-Out Fee Policies In Line with MOHCD Goals and the Industry (Section II.B.3):
    Proposed change: MOHCD Staff propose: 1) eliminating the minimum $500,000 GP Equity Contribution; 2) being explicit about MOHCD's intent to use Non Cash-Out Fee up to 15% of eligible basis to reduce MOHCD's gap loan amount; and 3) creating flexibility in allowing Non Cash-Out Fee to be achieved through both Non Cash-Out Deferred Fee and/or GP Equity Contributions.
    Rationale: The purpose of these proposed changes is to clarify that while the Fee does not get distributed to development teams (ie. Non Cash-Out Fee), it is an important tool for increasing

the project's eligible basis, which brings more tax credit equity into the project. Historically, GP Equity Contributions have been the Non Cash-Out Fee that has served this purpose. However, financing partners in the affordable housing development Industry are beginning to prefer Non Cash-Out Deferred Fee, based on their interpretation of tax law. The proposed Policy update allows the developer more flexibility in achieving the same goal.

e. Clarifying Fee Distribution Milestones (Section III):

Proposed change: MOHCD Staff propose updating the Milestones chart in Section III of the Policy to align with the Technical Change to the Developer Fee Policy approved by Loan Committee in 2018. Furthermore, the paragraph describing the At-Risk Fee in the current Policy has been translated into a chart that's easier to read. Finally, Staff propose that Fee earned during the pre-development period must be split evenly (ie. 50%-50%) when the development team is composed of two Joint Venture partners.
Rationale: The proposed requirement for Joint Venture partners during the pre-development period is to ensure that new or emerging partners have access to Fee upfront to support their participation in the project and their capacity building. New or emerging affordable housing developers typically build their capacity and development experience through these types of partnerships. This change is in direct support of the City's racial equity goals.

3. Staff Recommendation

Guided by the principles outlined in Section 1 and reflecting the rationales summarized in Section 2, MOHCD Staff recommends changes to the current Developer Fee Policy as proposed in Attachments A (clean version) and Attachment B (comparison to current policy).

4. Loan Committee Modifications

Chavez, Rosanna (MYR)

From:	Shaw, Eric (MYR)
Sent:	Friday, October 16, 2020 11:20 AM
To:	Chavez, Rosanna (MYR)
Subject:	Changes to MOHCD Developer Fee policy

Approve

Eric D. Shaw
Director

Mayor's Office of Housing and Community Development
City and County of San Francisco
1 South Van Ness Avenue, 5th Floor

Chavez, Rosanna (MYR)

From:	Oerth, Sally (CII)
Sent:	Friday, October 16, 2020 11:11 AM
To:	Chavez, Rosanna (MYR); Shaw, Eric (MYR)
Subject:	10/16/20 Loan Committee: Developer Fee Policy Update

On behalf of Nadia Sesay, I approve the Developer Fee Policy Update memo presented at the 10/16/20 Loan Committee meeting.

Sally Oerth
Deputy Director

office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE
O C I I

Chavez, Rosanna (MYR)

From:	Menjivar, Salvador (HOM)
Sent:	Friday, October 16, 2020 12:24 PM
To:	Chavez, Rosanna (MYR)
Cc:	Shaw, Eric (MYR)
Subject:	New Developer fee policy

I approve the new Developer Fee Policy

Salvador

Salvador Menjivar
Director of Housing
Pronouns: He/Him
San Francisco Department of Homelessness and Supportive Housing
salvador.menjivar1**@sfgov.org** | 415-308-2843

Learn: hsh.sfgov.org | Follow: @SF_HSH | Like: @SanFranciscoHSH

CONFIDENTIALITY NOTICE: This e-mail is intended for the recipient only. If you receive this e-mail in error, notify the sender and destroy the e-mail immediately. Disclosure of the Personal Health Information (PHI) contained herein may subject the discloser to civil or criminal penalties under state and federal privacy laws.

From:	Katz, Bridget (CON)
Sent:	Friday, October 16, 2020 11:10 AM
To:	Chavez, Rosanna (MYR)
Cc:	Shaw, Eric (MYR)
Subject:	Developer Fee - Item #1

Approved

Bridget Katz
Development Finance Specialist, Office of Public Finance
Controller's Office | City & County of San Francisco
Office Phone: (415) 554-6240
Cell Phone: (858) 442-7059
E-mail: bridget.katz@sfgov.org

LOAN COMMITTEE RECOMMENDATION

Approval indicates approval with modifications, when so determined by the Committee.
[ ]   APPROVE.   [ ]   DISAPPROVE.   [ ]   TAKE NO ACTION.

_____   Date: _____
Eric D. Shaw, Director
Mayor's Office of Housing and Community Development

[ ]   APPROVE.   [ ]   DISAPPROVE.   [ ]   TAKE NO ACTION.

_____   Date: _____
Nadia Sesay, Executive Director
Office of Community Investment and Infrastructure

[ ]   APPROVE.   [ ]   DISAPPROVE.   [ ]   TAKE NO ACTION.

_____   Date: _____
Salvador Menjivar, Housing Director
Department of Homeless and Supportive Housing

[ ]   APPROVE.   [ ]   DISAPPROVE.   [ ]   TAKE NO ACTION.

_____   Date: _____
Anna Van Degna, Director
Controller's Office of Public Finance

Attachments: Attachment A – Updated Developer Fee Policy - clean
                  Attachment B – Updated Developer Fee Policy – blacklines compared to 2016 Policy
                  Attachment C – Technical Update to MOHCD Developer Fee Policy for Tax Credit
                           Projects – July 20, 2018

Attachment A: Updated Developer Fee Policy - clean

See attached.

Mayor's Office of Housing and Community Development
Policy on Development Fees for Tax Credit Projects
Effective _____, 2020

This MOHCD Developer Fee Policy for Tax Credit Projects applies to all developments seeking City funding in conjunction with new tax credit financing for the current project, including recapitalization projects with existing MOHCD loans. This does not apply to non-Tax Credit projects such as Small Sites Program projects. It also does not apply to HOPE SF or RAD projects, which are subject to separate developer fee policies.

Developers may include fees in their project budgets according to the terms below.

I. MINIMUM FEES: 5% of total development costs.

II. MAXIMUM FEES: Notwithstanding any other section of this Fee Policy, the maximum Total Fee that may be included in basis is the Tax Credit limit (currently 15% of eligible basis) subject to the additional limitations identified below.

    A. Total Development Fee
    ("Total Fee") for different project types are further detailed below, and reflect the sum of the Cash-Out Fee (Base, Additional, and Deferred) and Non Cash-Out Fee (Deferred and General Partner Equity Contribution).

    B. Fee Components

      1. Cash-Out Fee (Base and Additional)

Project Type	9% Project - Maximum Cash-Out Fee	4% Project - Maximum Cash-Out Fee	Notes
New Construction	TCAC Maximum	The lesser of TCAC Maximum or $2,200,000 (Base) + $10,000 per unit over 100 units (Additional), if additional cash-out requires no additional MOHCD gap funding.	

Newly Acquired and Substantially Rehabilitated (Per unit Hard Cost >= $75,000)	TCAC Maximum	Same as new construction fee.	-Hard Cost is defined as "Total Construction Costs" summed in the MOHCD Application in cell K37, Tab 4b-PermS&U.
Substantial Rehabilitation (Per unit Hard Cost >=$75,000) by Existing or Affiliate GP -- **Includes New City Funds or Re-structured City Debt**	50% TCAC Maximum	The lesser of TCAC maximum or $1,000,000 (Base) + $10,000 per unit over 100 units (Additional), if additional cash-out requires no additional MOHCD gap funding.	-Sponsor may take the allowable fee for Newly Acquired and Rehabilitated projects described above if 1) in the project's original syndication, sponsor did not take the maximum allowable developer fee; or 2) sponsor adds new affordable units to the project. -Hard Cost is defined as "Total Construction Costs" summed in the MOHCD Application in cell K37, Tab 4b-PermS&U. -Sponsor cash out permissible only per MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy.
Recapitalization, acquisition, or transfer with less than $75,000 Per unit hard cost capital improvements	No Fee	No Fee	-Hard Cost is defined as "Total Construction Costs" summed in the MOHCD Application in cell K37, Tab 4b-PermS&U. -Sponsor cash out permissible only per MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy.

a. <u>A note about Cash-Out Additional Fee</u>: If eligible basis is less than Threshold Basis, projects over 100 units may take up to $10,000 per unit over 100 as cash-out fee, but only if such cash payment does not require additional gap funding from MOHCD (see MOHCD Application, Tab 8-DevFeeCalc, for calculation).

2. Cash-Out Fee (Deferred): If eligible basis is less than Threshold Basis, Developers may include a Cash-Out Deferred Fee component in the Total Fee up to the aggregate of 50% of surplus cash flow taken over the project's first 15 years of operation (after typical payments of base ground rent, the general partner management fee, and investor asset management fee, if applicable). Cash-Out Deferred Fee is shown as both a source and a use of funds in the capital budget. Developers may use industry standard inflators of income and expenses to calculate Cash-Out Deferred Fee.

    a. Distributions of surplus cash as Deferred Fee are in lieu of an Incentive Management Fee. At Year 15 of operations, or earlier if the Deferred Fee is fully repaid before then, a surplus cash distribution as Incentive Management Fee shall commence at 33.3% of surplus cash (after typical payments of base ground rent, the general partner management fee, and investor asset management fee, if applicable).

    b. For projects supported by the Local Operating Subsidy Program, Cash-Out Deferred Fee must be taken over a minimum time period of 5 years.

3. Non-Cash Out Fee (Deferred and General Partner Equity Contribution): Where eligible basis is less than Threshold Basis, Developers should include in Total Fee the maximum amount available for re-contribution as General Partner Equity or as Non-Cash Out Deferred Fee. It is MOHCD's intent to use Deferred Fee and General Partner Equity Contribution up to 15% of eligible basis to reduce MOHCD's overall contribution to projects, so that MOHCD may invest its funds in the most projects possible. MOHCD will work with developers, lenders, and investors to ensure that the developer fee structure meets MOHCD financing goals and feasibility considerations.

4. Commercial Developer Fee is not addressed in this Policy. Please see MOHCD's Commercial Underwriting Guidelines for information regarding development fees associated with Commercial, Community Serving Commercial, and Public Benefit Use spaces.

III. FEE DISTRIBUTION: The Cash-Out Base Fee shall be divided equally between "Project Management Fee" and "At-Risk Fee" (subject to the "At-Risk Fee Adjustment" described below). Any Cash-Out Additional Fee will be distributed as At-Risk Fee. Cash-Out Fees (Base and Additional) shall be distributed according to achievement of certain development milestones, as follows:

Example below assumes Base Fee is $2.2 M and Additional Fee is $300,000.

Project Management Milestone	% of Fee Distributed	Fee Amount
Acquisition, if applicable, or predevelopment loan closing (or another agreed-upon milestone if acquisition is not applicable, e.g. being awarded a	15%	$165,000

City-owned site through a RFQ/RFP process)*		
During Predevelopment/ with no more than 50% of the total Project Management Fee to be disbursed prior to construction closing*	35%	$385,000
At Construction Closing	20%	$220,000
During construction (disbursed upon request depending on % of construction completion) or at Completion of Construction	20%	$220,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor's project completion report and documents; and City acceptance of final cost certification.	10%	$110,000
TOTAL PROJECT MANAGEMENT FEE	**100%**	**$1,100,000**

*Joint Venture development team partners must split all Fee during the pre-development period 50%-50%. This helps ensure the less experienced partner has access to Fee upfront to support their participation in the project and their capacity building.

At-Risk Fee Milestone	% of Fee Distributed	Fee Amount
Qualified Occupancy (95% Leased up and Draft Cost Certification Audit)	20%	$280,000
Permanent Loan Closing/Conversion (Final Cost Certification Audit)	50%	$700,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor's project completion report and documents; and City acceptance of final cost certification.	30%	$420,000
TOTAL AT-RISK FEE	**100%**	**$1,400,000**

A. At-Risk Fee Adjustment

When outside funding sources limit the Cash Out Fee to a value less than MOHCD's standard (e.g., California's Department of Housing and Community Development), the Developer may still be paid a maximum of $1.1M as a Project Management Fee and the At-Risk Fee shall be reduced to bring the total Cash-Out Fee (Base and Additional) in line with the outside funding source cap.

IV. WAIVERS OF THE DEVELOPER FEE POLICY

The Citywide Affordable Housing Loan Committee may approve a waiver or modification of any portion of this policy for the purpose of assuring project feasibility. All recommendations related to this policy are subject to the Mayor's approval in his or her sole discretion.

V. CDBG or HOME REQUIREMENTS

If MOHCD uses CDBG or HOME funds to pay the development fee, it is considered "program income", and, should MOHCD request it, the Sponsor must provide a report to MOHCD on its use of developer fees.

Recipients of CDBG administrative funding may not also receive a Project Management Fee for the same project covering the same time period.

VI. POLICY IMPLEMENTATION

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

Attachment B: Updated Developer Fee Policy – blacklines compared to 2016 Policy

See attached.

This MOHCD Developer Fee Policy for Tax Credit Projects applies to all developments seeking City funding in conjunction with new tax credit financing for the current project, including recapitalization projects with existing MOHCD loans. This does not apply to non-Tax Credit projects such as Small ~~Site~~Sites Program projects. It also does not apply to HOPE SF or RAD projects, which are subject to separate developer fee policies.

Developers may include fees in their project budgets according to the terms below.

I. MINIMUM FEES: 5% of total development costs.

II. MAXIMUM FEES: Notwithstanding any other section of this Fee Policy, the maximum Total Fee that may be included in basis is the ~~lesser of $4 million or 10~~Tax Credit limit (currently 15% of eligible basis) subject to the additional limitations identified below.

    A. Total Development Fee
    ("Total Fee") for different project types are further detailed below, and reflect the sum of the Cash-Out Fee~~, GP~~ (Base, Additional, and Deferred) and Non Cash-Out Fee (Deferred and General Partner Equity Contribution~~, and Deferred Fee, if any.~~).

    B. Fee Components

    1. Cash-Out Fee (Base and Additional)

Project Type	9% Project - Maximum Cash-Out Fee	4% Project - Maximum Cash-Out Fee	Notes
New Construction	TCAC Maximum	The lesser of TCAC Maximum or $2,200,000~~,000~~ (Base) + $10,000 per unit over 100 units~~,~~ (Additional), if additional cash-out requires no additional MOHCD gap funding.	~~Developers may also take deferred fee; see further explanations below.~~
Newly Acquired and Substantially Rehabilitated (Per unit Hard Cost >= $75~~50~~,000)	TCAC Maximum	Same as new construction fee.	-Hard Cost is defined as "Total Construction Costs" summed in the MOHCD Application in cell K37, Tab 4b-PermS&U.

Substantial Rehabilitation (Per unit Hard Cost >=$~~50~~75,000) by Existing or Affiliate GP -- **Includes New City Funds or Re-structured City Debt**	50% TCAC Maximum	The lesser of TCAC maximum or $1,000,000 (Base) + $10,000 per unit over 100 units, (Additional), if additional cash-out requires no additional MOHCD gap funding.	-Sponsor may take the allowable fee for Newly Acquired and Rehabilitated projects described above if 1) in the project's original syndication, sponsor did not take the maximum allowable developer fee; or 2) sponsor adds new affordable units to the project. ~~Sponsor cash out from acquisition proceeds is prohibited.~~ -Hard Cost is defined as "Total Construction Costs" summed in the MOHCD Application in cell K37, Tab 4b-PermS&U. -Sponsor cash out permissible only per MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy.
~~Substantial Rehabilitation (Per unit Hard Cost >=$50,000) by Existing or Affiliate GP – No New City Funds~~	~~TCAC Maximum~~	~~Same as new construction fee.~~	~~Repayment of existing City loans shall be made pari passu with any sponsor cash out via acquisition proceeds, up to the full value of the City loan(s) plus remaining value of any City ground lease and/or operating subsidy.~~
Recapitalization, acquisition, or transfer with less than $~~50~~75,000 Per unit hard cost capital improvements	No Fee	No Fee	-Hard Cost is defined as "Total Construction Costs" summed in the MOHCD Application in cell K37, Tab 4b-PermS&U. -Sponsor cash out permissible only per MOHCD Cash Out Acquisition/Rehabilitation, Resyndication, and Refinancing Policy.

~~B. Total~~ A note about Cash-Out ~~Fee Components~~

   a. Additional ~~Cash Out~~Fee: If eligible basis is less than Threshold Basis, ~~Projects~~projects over 100 units may take up to $10,000 per unit over 100 as cash-out fee, but only if such cash payment does not require additional gap funding from MOHCD (~~i.e., the cost of the~~

> > ~~additional developer fee taken as cash must be covered solely by the additional equity generated by any applicable deferred fee and by the additional cash-out fee itself).~~ see MOHCD Application, Tab 8-DevFeeCalc, for calculation).

> 2. Cash-Out Fee (Deferred ~~Developer Fee:~~): If eligible basis~~, including the maximum fee amount available as General Partner Equity,~~ is less than Threshold Basis, Developers may include ~~in~~ a Cash-Out Deferred Fee component in the Total Fee ~~an amount equal~~up to the aggregate of 50% of surplus cash flow taken over ~~a maximum of~~the project's first 15 years ~~(and~~ of operation (after ~~payment of~~typical payments of base ground rent, the general partner management fee, and investor asset management fee, if applicable~~) as~~). Cash-Out Deferred ~~Developer~~ Fee is shown as both a source and a use of funds in the capital budget. Developers may use industry standard inflators of income and expenses to calculate Cash-Out Deferred ~~Developer~~ Fee.

> > a. Distributions of surplus cash as Deferred ~~Developer~~ Fee are in lieu of an Incentive Management Fee. ~~Upon full payment of the Deferred Fee, which may be prior to~~At Year 15 of operations, or earlier if the Deferred Fee is fully repaid before then, a surplus cash distribution as Incentive Management Fee shall commence~~,~~ at 33.3% of surplus cash (~~and~~ after ~~payment of~~typical payments of base ground rent, the general partner management fee, and investor asset management fee, if applicable).
> > b. For projects supported by the Local Operating Subsidy Program, Cash-Out Deferred ~~Developer~~ Fee must be taken over a minimum time period of 5 years.

> 3. Non-Cash Out Fee (Deferred and General Partner Equity~~: If~~ Contribution): Where eligible basis is less than Threshold Basis, Developers should include in Total Fee the maximum amount available for re-contribution as General Partner Equity~~, with a minimum target of $500,000.~~ or as Non-Cash Out Deferred Fee. It is MOHCD's intent to use Deferred Fee and General Partner Equity Contribution up to 15% of eligible basis to reduce MOHCD's overall contribution to projects, so that MOHCD may invest its funds in the most projects possible. MOHCD will work with developers, lenders, and investors to ensure that the developer fee structure meets MOHCD financing goals and feasibility considerations.

> 4. Commercial Developer Fee is not addressed in this Policy. Please see MOHCD's Commercial Underwriting Guidelines for information regarding development fees associated with Commercial, Community Serving Commercial, and Public Benefit Use spaces.

III. FEE DISTRIBUTION: The ~~Maximum~~Cash-Out Base Fee shall be divided equally between ~~an "At-Risk Fee" and~~ "Project Management Fee" and "At-Risk Fee" (subject to the "At-Risk Fee Adjustment" described below).

> A. ~~Project Management~~Any Cash-Out Additional Fee will be distributed as At-Risk Fee. Cash-Out Fees

~~Project Management Fees~~(Base and Additional) shall be distributed according to achievement of certain development milestones, as follows:

> *(PM Fee assuming Maximum Fee is $2MM)*

Example below assumes Base Fee is $2.2 M and Additional Fee is $300,000.

Project Management Milestone	Project Mgmt% of Fee DistributionDistributed	Total PM Fee: $1,000,000 Amount
Acquisition, if applicable, or predevelopment loan closing (or another agreed-upon milestone if acquisition is not applicable, e.g. being awarded a City-owned site through a RFQ/RFP process)*	15%	$150165,000
During Predevelopment/ with no more than 3550% of the total Project Management Fee to be disbursed prior to construction closing*	35%	$350385,000
At Construction Closing	20%	$200220,000
During construction (disbursed upon request depending on % of construction completion) or at Completion of Construction	20%	$200220,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor's project completion report and documents; and City acceptance of final cost certification.	10%	$100110,000
TOTAL PM FEE	100%	$1,000,000
TOTAL AT RISKPROJECT MANAGEMENT FEE	100%	$1,000,000 + $10,000/unit over 100 units (if applicable)$1,100,000
TOTAL CASH-OUT DEVELOPER FEE		$2,000,000 + $10,000/unit over 100 units

*Joint Venture development team partners must split all Fee during the pre-development period 50%-50%. This helps ensure the less experienced partner has access to Fee upfront to support their participation in the project and their capacity building.

B.   At-Risk Fee   ————

The remaining 50% of the base Cash-Out Fee + 100% of additional cash-out fee for projects with unit counts over 100 are at-risk for cost overruns that exceed the available contingency funds in the final project budget approved by MOHCD at construction loan closing. One fifth (20%) of the At-Risk Fee may be paid at Qualified Occupancy (95% Leased up and Draft Cost Certification Audit). One half (50%) of the At-Risk fee may be paid out at Permanent Loan Closing/Conversion (Final Cost Certification Audit). The remaining At-Risk fee (30%) may be paid at Project Close-Out, as defined above, including City approval of sponsor's project completion report and documents.

At-Risk Fee Milestone	% of Fee Distributed	Fee Amount
Qualified Occupancy (95% Leased up and Draft Cost Certification Audit)	20%	$280,000
Permanent Loan Closing/Conversion (Final Cost Certification Audit)	50%	$700,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor's project completion report and documents; and City acceptance of final cost certification.	30%	$420,000
TOTAL AT-RISK FEE	100%	$1,400,000

C.A.   At-Risk Fee Adjustment

When outside funding sources limit the MaximumCash Out Fee to a value less than MOHCD's standard (e.g., California's Department of Housing and Community Development), the At-Risk Fee shall be capped at $200,000 or 20% of the Maximum Fee, whichever is lessDeveloper may still be paid a maximum of $1.1M as a Project Management Fee and the At-Risk Fee shall be reduced to bring the total Cash-Out Fee (Base and Additional) in line with the outside funding source cap.

IV. WAIVERS OF THE DEVELOPER FEE POLICY

The Citywide Affordable Housing Loan Committee may recommendapprove a waiver or modification of any portion of this policy for the purpose of assuring project feasibility. All recommendations related to this policy are subject to the Mayor's approval in his or her sole discretion.

V. CDBG or HOME REQUIREMENTS

If MOHCD uses CDBG or HOME funds to pay the development fee, it is considered "program income", and, should MOHCD request it, the sponsorSponsor must provide a report to MOHCD on its use of developer fees.

Recipients of CDBG administrative funding may not also receive a Project Management Fee for the same project covering the same time period.

VI. POLICY IMPLEMENTATION

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

Attachment C: Technical Update to MOHCD Developer Fee Policy for Tax Credit Projects – July 20, 2018

See attached.

Citywide Affordable Housing Loan Committee

San Francisco Mayor's Office of Housing and Community Development

Office of Community Investment and Infrastructure

Department of Homelessness and Supportive Housing

MEMORANDUM

DATE: July 20, 2018
TO: CITYWIDE AFFORDABLE HOUSING LOAN COMMITTEE
FROM: Kate Hartley, Director, MOHCD
RE: Technical Update to MOHCD Developer Fee Policy for Tax Credit Projects

---

1.   This Request

The Mayor's Office of Housing and Community Development requests approval of a technical update to its "Policy on Development Fees for Tax Credit Projects" (Fee Policy). The Fee Policy currently allows Developers to take a developer fee for 4% low-income housing tax credit projects that is "The lesser of TCAC Maximum, or $2,000,000, + $10,000 per unit over 100 units if additional cash-out requires no additional MOHCD gap funding." The California Tax Credit Allocation Committee (TCAC) recently increased its base fee limit for 9% tax credit deals from $2 million to $2.2 million. (TCAC's base fee limit for 4% tax credit projects is $2.5 million.) MOHCD requests that the maximum base "cash-out" fee allowed in the Fee Policy for 4% projects be increased to $2.2 million to reflect the change. The additional $200,000 in Developer Fee would be divided equally between Project Management Fees and At Risk Fee under this proposal. Furthermore, MOHCD requests a reference to MOHCD's commercial developer fee policy be added to the Fee Policy and proposes to correct a typo in the Fee Policy's milestones chart.

2.   Reason for the Request

The Mayor's Office of Housing and Community Development and Office of Community Investment and Infrastructure underwrite projects seeking loans according to a variety of policies and procedures developed over time, with stakeholder input, and approved by Loan Committee. One of these is the Fee Policy (effective July 29, 2016.) This Fee Policy informs project sponsor requests and is the basis by which MOHCD and OCII approve developer fee budgeting. Any project seeking a MOHCD or OCII loan must be in conformance with the Fee

Policy or specifically request a waiver from the policy for a compelling reason that Loan Committee must approve.

MOHCD set the Fee Policy to reflect other important regulatory requirements, specifically TCAC's regulations. So that MOHCD can continue to conform its Fee Policy with TCAC limits related to tax credit projects, the "TCAC Maximum" value in the Fee Policy should change from $2 million to $2.2 million.

3.   Staff Recommendation

Amend the Mayor's Office of Housing and Community Development Policy on Development Fees for Tax Credit Projects as follows:

Project Type	9% Project - Maximum Cash-Out Fee	4% Project - Maximum Cash-Out Fee	Notes
New Construction	TCAC Maximum	The lesser of TCAC Maximum allowed by the relevant eligible basis calculation **OR** $2.2 million + $10,000 per unit over 100 units, if additional cash-out requires no additional MOHCD gap funding. In addition, projects with commercial spaces may take a commercial developer fee in conformance with MOHCD's commercial underwriting guidelines.	Developers may also take deferred fee; see further explanations below.

The Fee Distribution Table will be updated as follows

Milestone	Project Mgmt Fee Distribution	Total PM Fee: $1,100,000
Acquisition, if applicable, or predevelopment loan closing (or another agreed-upon milestone if acquisition is not applicable, e.g. being awarded a City-owned site through a RFQ/RFP process)	15%	$165,000

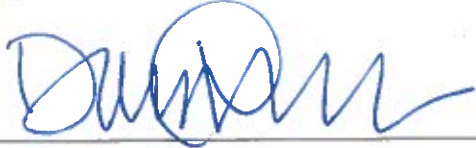|		
During Predevelopment, with no more than 50% of the total Project Management Fee during the predevelopment period	35%	$385,000
At Construction Closing	20%	$220,000
During construction (disbursed upon request depending on % of construction completion) or at Completion of Construction	20%	$220,000
Project Close-Out: Placed-In-Service application; 100% lease-up; City approval of sponsor's project completion report and documents; and City acceptance of final cost certification.	10%	$110,000
TOTAL PM FEE	**100%**	**$1,100,000**
TOTAL AT-RISK FEE		**$1,100,000 + $10,000/unit over 100 units (if applicable)**
TOTAL CASH-OUT DEVELOPER FEE		**$2,200,000 + $10,000/unit over 100 units**

4.   Loan Committee Modifications

5.   LOAN COMMITTEE RECOMMENDATION

Approval indicates approval with modifications, when so determined by the Committee.

[✓]   APPROVE.   [ ]   DISAPPROVE.   [ ]   TAKE NO ACTION.

Date: 7-20-18

Dan
Adams
~~Kate Hartley, Director~~
Mayor's Office of ~~Deputy~~ Housing and Community Development

[✓]   APPROVE.   [ ]   DISAPPROVE.   [ ]   TAKE NO ACTION.

Date: 7-20-18

Nadia Sesay, Executive Director
Office of Community Investment and Infrastructure

[✓]   APPROVE.   [ ]   DISAPPROVE.   [ ]   TAKE NO ACTION.

Date: 7-20-18

Jeff Kositsky, Director
Department of Homelessness and Supportive Housing

Kerry Abbott, Deputy Director
for