

**City and County of San Francisco**  
**Mayor's Office of Housing and Community Development**  
**Residual Receipts Policy**  
**Effective Date: May 16, 2025**

**I. Introduction**

The Mayor's Office of Housing and Community Development (MOHCD) typically requires annual payments under ground leases and loans provided for the purpose of developing or preserving affordable housing to the extent that making payments is feasible and does not jeopardize the long-term affordability or maintenance of safe and secure housing for its residents. Payments may be required under one or a combination of several structures, including amortization, deferral, or payment from residual receipts, depending on the circumstances.

When a development financed by MOHCD is projected to enjoy more income than is needed to pay expenses, service other debt, fully fund its reserves, and make approved payments out of surplus, it is MOHCD's policy that a portion of the remaining "residual" income be directed toward repayment of MOHCD's investment (loan and/or below market ground lease).

MOHCD also permits a modest portion of "residual" income to be distributed by the borrower. Distribution of any portion of "residual receipts" is conditioned on MOHCD's annual determination that certain performance standards and benchmarks have been met. This Residual Receipts Policy (this "**Policy**") sets forth the terms for repayment of MOHCD loans and/or payment of residual rent under MOHCD ground leases. For the purposes of this Policy, a "**Borrower**" means, collectively, the legal entity that owns an affordable housing project financed by MOHCD and borrowed funds from MOHCD, and all organizations within the ownership structure of the borrowing legal entity, including, but not limited to, project sponsors that own/control a portfolio of affordable housing financed by MOHCD.

The Residual Receipts Policy 2021 Supplement has expired.

**II. Definition of Residual Receipts**

Residual Receipts is the amount remaining in the annual operating budget after calculation of Net Operating Income (Project Income less Project Expenses) less any allowable uses of remaining cash flow before payment to MOHCD, such as partnership fees.

"**Project**" means an affordable housing project financed by MOHCD and/or on land owned by the City.

"**Project Income**" means all income and receipts in any form received by borrower from the operation of a Project, including, but not limited to, the following:

- (a) rents, fees, charges, and deposits (other than tenant's refundable security deposits);

- (b) Section 8 or other rental subsidy payments received for a Project, supportive services funding (if applicable);
- (c) price index adjustments and any other rental adjustments to leases or rental agreements;
- (d) proceeds from vending and laundry room machines;
- (e) the proceeds of business interruption or similar insurance;
- (f) any accrued interest disbursed from any reserve account required under the MOHCD loan agreement for a purpose other than that for which the reserve account was established;
- (g) reimbursements and other charges paid to the borrower in connection with a Project; and
- (h) other consideration actually received from the operation of such project, including non-residential uses of Project.

Project Income will not include interest accruing on any portion of the MOHCD loan or tenant's refundable security deposits. Project Income will also not include income from a project's commercial space if specified in the MOHCD loan agreement and approved by MOHCD.

**"Project Expenses"** means the following applicable costs, which may be paid from **Project Income** in the following order of priority to the extent of available **Project Income**:

- (a) all charges incurred in the operation of a Project for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement or by other lenders providing secured financing for the Project;
- (b) salaries, wages and any other compensation due and payable to the employees or agents of Borrower employed in connection with the Project, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments;
- (c) required payments of interest and principal, if any, on any junior or senior financing secured by the Project and used to finance the Project that has been approved by the City;
- (d) all other expenses actually incurred to cover operating costs of the Project, including maintenance and repairs and the fee of any managing agent as indicated in the Annual Operating Budget;
- (e) annual base rent under the ground lease with the City;

- (f) required deposits to the replacement reserve account, operating reserve account and any other reserve account required under the MOHCD loan agreement or by other lenders approved by MOHCD;
- (g) the approved annual asset management fees indicated in the Annual Operating Budget and approved by MOHCD;
- (h) any extraordinary expenses approved in advance by the City (other than expenses paid from any reserve account); and
- (i) any supportive services required by MOHCD.

The project-specific contracts may define what Project Income entails and which Project Expenses are allowable with the prior written approval of MOHCD. Each MOHCD contract will include a copy of the approved Operating Budget Proforma. **Project Expenses shall not include the following: partnership fees, developer fees, tax credit adjustors, or taxes owed by a limited partnership unrelated to the operations of a Project.**

Borrowers must clearly define and request which uses of annual cash flow/surplus cash have been approved for payment prior to the calculation of the amounts owed to MOHCD (and to other soft debt lenders, if applicable), and amount intended to be retained by the Borrower.

The approved uses of any available annual surplus cash may also be referred to as the “cash flow waterfall.” The approved MOHCD Operating Budget Proforma is used to document the approved cash flow waterfall. In general, the following expenses may be a part of a cash flow waterfall:

1. Fees payable to the general partner, the limited partner, or asset management fees, if applicable (e.g. HCD funded project)
2. Fees payable to project funders
3. Deferred developer fee

Please see the City’s Developer Fee Policy and Operating Fees Policy for a list of allowable fees and any applicable limits.

Limited Partnership Agreements may also provide a narrative summary of the cash flow waterfall. In the event that a Limited Partnership Agreements is found to be inconsistent with the MOHCD Funding Agreement and/or the approved MOHCD Operating Budget Proforma, the MOHCD documents shall control.

### **III. Annual Residual Receipts Payments due under MOHCD Ground Leases & Loans**

**A. General Requirement.** Except as recommended by the Loan Committee and approved by the Mayor on a project by project basis, the portion to be paid to the City shall be 50% of Residual Receipts to repay loans or pay residual rent. Larger Tax Credit projects. The Borrower’s portion of Residual

Receipts shall be considered payment of Deferred Developer Fee for tax credit projects. See the Developer Fee Policy for more details.

Any Residual Receipts loan payments shall be applied toward the unpaid balance of MOHCD's loan(s) according to the terms in MOHCD's promissory note and/or loan agreement. In general, payments are applied first to any fees and/or penalties, second to accrued and unpaid interest, and third to the outstanding principal amount of the loan. Any Residual Receipts payments required under a MOHCD ground lease ("Residual Rent") shall be due after full repayment of a MOHCD loan and any other soft debt loans approved by MOHCD (see above).

**B. Special Waiver.** For a Borrower that has Project that was placed in service prior to the Effective Date and has residual receipts loan repayment obligations, such Borrower shall continue to comply with their existing MOHCD loan agreement and promissory note(s), but may request a waiver to the residual receipt loan repayment amount. MOHCD may modify repayment amounts to be consistent with this Residual Receipts Policy as of the Effective Date, as amended from time to time, if a Borrower demonstrates the following:

1. Borrower is not in default under any loan agreement with MOHCD, or has any outstanding non-compliance notices issued by MOHCD;
2. Borrower has submitted all required Annual Monitoring Reports to MOHCD;
3. Project sponsor owns/control a portfolio of at least two (2) affordable housing financed by MOHCD, SFRA or OCII; and,
4. Borrower's portfolio of affordable housing has the minimum reserves required under applicable loan agreements and most recent capital needs assessment.

For example, if under current contracts, a Borrower must pay 2/3 of Residual Receipts to MOHCD for loan repayment and may retain a 1/3 of Residual Receipts as a Distribution, MOHCD may waive the repayment amount such that Borrower pays 50% of Residual Receipts to the City for loan repayment and could retain 50% of Residual Receipts as a Distribution (or a larger percentage distribution under future policy updates). If a Borrower's portfolio shows that one or more properties have insufficient reserves or has an operating deficit ("**Deficit Property**"), MOHCD may condition the waiver on the Borrower disbursing funds to a Deficit Property. A waiver granted under this section will be reviewed on an annual basis. For any project that has received a waiver, Borrower must agree to amend the MOHCD loan documents at the time the project refinances permanent debt, resyndicates, or receives additional funds from MOHCD. At no point will any Borrower be required to retain a smaller share of Residual Receipts than what their loan agreement and promissory note(s) call for, unless mutually agreed upon by MOHCD and the Borrower. The foregoing special waiver will not apply to modifications of residual rent, which requires the approval of the Board of Supervisors.

#### **IV. When more than one MOHCD contract requires residual payments**

Some projects supported by MOHCD may be governed by more than one MOHCD contract due to capital financing provided to the project at various times. In general, Residual Receipts payments to MOHCD will be allocated proportionately to each loan's original principal amount. The MOHCD

Operating Budget Proforma provides a comprehensive summary of the approved cash flow waterfall, a listing of all lenders, the relative position of each lien, the amounts owed and the relevant repayment terms, and will also reflect the cumulative amount of repayments owed to MOHCD annually across all MOHCD contracts. If a Borrower requests loan modifications related to a Project governed by more than one MOHCD contract executed before the Effective Date, Borrower will be required to get approval of a new MOHCD Operating Budget Proforma that reflects a comprehensive summary of the approved cash flow waterfall during the applicable approval process. Current best practice is to amend and restate all loan agreements and consolidate the loans so that all MOHCD loan requirements are consistent.

#### **V. When a project has other Lenders in addition to MOHCD that require Residual Receipts payments**

- A. If any other project lender besides MOHCD require repayment from Residual Receipts (a “soft debt lender”), the portion to be repaid to each lender will typically be determined by comparing (1) the amount of capital under a lender’s loan(s) in proportion to (2) the City’s total financial assistance (all loans, grants, land write down, and/or other project costs paid by the City) to the Project. For example, if a Project received \$6 million from MOHCD in the form of a capital loan, operating subsidy grant, and below market lease, and a \$2 million soft debt loan from another lender (\$8 million total), MOHCD would receive 75% of the amount available of Residual Receipts (see above) as loan repayment, and the other lender would receive 25% of the amount available of Residual Receipts as loan repayment. If Borrower will receive a loan from the California Department of Housing and Community Development, MOHCD will agree to the requirements under the Uniform Multifamily Regulations. The approved MOHCD Operating Budget Proforma must include a list of all Loans and provide an appropriate amount of detail about the projected amounts owed annually including details about how the portions to be paid to each lender will be calculated. If a Borrower intends to make an agreement with any other soft debt lender(s) after executing a MOHCD contract containing the final MOHCD-approved Operating Budget Proforma, Borrower must request MOHCD’s prior written approval of such loan and to amend the MOHCD-approved Operating Budget Proforma to include the new lender(s). Notwithstanding anything to the contrary in this Section V(A), soft debt loans from Borrower’s general partner or any entity affiliated with the Borrower or Borrower’s general partner shall be repaid from the Borrower’s share of Residual Receipts described in Section VI.
- B. During operations, MOHCD will require Residual Receipts payments using MOHCD’s calculation method. If there is a difference in the amount calculated to be owed to any other lenders under another lender’s repayment calculation method when compared to MOHCD method, then each lender will be paid according to its own calculation, so long as doing so would not result in a reduction in the amount payable to MOHCD.

See Exhibit A for sample residual receipt calculations.

#### **VI. Distribution of Residual Receipts to Borrower**

- A. If Borrower satisfies the conditions below, Borrower may retain the remaining portion (50%) of Residual Receipts as a Distribution under the MOHCD loan agreement and Borrower’s Limited Partnership Agreement. Subject to MOHCD granting a repayment waiver (see above), MOHCD will

allow Borrower to make a Distribution consistent with this Section VI, but no less than a prior funding approval.

- B. Distribution of Borrower's share of Residual Receipts (50%) under a MOHCD loan, or lessee of a MOHCD ground lease, may be made only after:
  - 1. MOHCD approval of the Annual Monitoring Report submitted for that year; and
  - 2. Determination by MOHCD that the Borrower is not in default under terms of the Loan; and
  - 3. Approval by MOHCD of the amount to be distributed.
- C. No distribution of Residual Receipts shall be made under any of the following circumstances:
  - 1. When a written notice of default has been issued by any lender or investor and such default has not been cured; or
  - 2. When the City determines that the Borrower or the Borrower's management agent has failed to maintain the housing and its surroundings in a safe and sanitary manner in accordance with local health, building, and housing codes; or
  - 3. If any operating expense, including debt service on non-City loans remains unpaid; or
  - 4. If any required reserve account is not fully funded according to the terms of the MOHCD contract(s); or
  - 5. In the event of any other material failure to comply with the provisions of the MOHCD contract(s).

#### **VII. Use of Residual Receipts Distributed to the Borrower**

MOHCD strongly encourages Project sponsors that to use the portion of Residual Receipts received from a Distribution for activities in San Francisco that would be eligible uses under the CDBG Program Income rules (except to the extent that those rules may prohibit the use of funds for new construction).

#### **VIII. Uses of Project Income**

Borrowers must obtain the prior written approval of MOHCD for any use of Project Income derived from housing developed or preserved with MOHCD financing that is inconsistent with a MOHCD loan agreement, this Policy, or any other MOHCD policy. Evaluation by the Loan Committee and approval by the Mayor will be required at the time MOHCD's financing is committed and approved.

#### **IX. Waiver of this Residual Receipts Policy**

Subject to the evaluation and approval of the Citywide Affordable Housing Loan Committee, MOHCD may waive or modify any requirement under this Policy for the purpose of assuring project feasibility or payment of costs associated with the provision of social, educational, vocational, counseling or other supportive services to residents. A Borrower may request a waiver under this Policy by submitting a written request to the MOHCD Director, in care of the assigned Project Manager/Asset Manager.

Exhibit A. Sample Calculations of Residual Receipts

	2025 Policy - MOHCD Soft Debt Lender Only	2025 Policy - MOHCD & HCD Soft Debt Lenders*
Project Income	Notes	Notes
Tenant Rents	[A]	[A]
Tenant Assistance Payments	[B]	[B]
Other Income	[C]	[C]
Gross Potential Income	[D]=[A]+[B]+[C]	[D]=[A]+[B]+[C]
Vacancy Loss	[E]	[E]
Effective Gross Income	[F]=[D]-[E]	[F]=[D]-[E]
Operating Expenses		
Management	[G]	[G]
Salaries/Benefits	[H]	[H]
Administration	[I]	[I]
Utilities	[J]	[J]
Taxes and Licenses	[K]	[K]
Insurance	[L]	[L]
Maintenance & Repair	[M]	[M]
Supportive Service	[N]	[N]
Total Operating Expenses	[O]=[G]+[H]+[I]+[J]+[K]+[L]+[M]+[N]	[O]=[G]+[H]+[I]+[J]+[K]+[L]+[M]+[N]
Reserves/Ground Lease Base Rent/Bond Fees	[P]	[P]
Net Operating Income	[Q]=[F]-[O]-[P]	[Q]=[F]-[O]-[P]
Debt Service/Must Pay Payments	[R]	[R]
Cash Flow (aka Surplus Cash)	[S]=[Q]-[R]	[S]=[Q]-[R]
Approved Uses of Cash Flow (aka Cash Flow Waterfall)		
Partnership Management Fee	[T]	[T]
Limited Partner Asset Management Fee	[U]	[U]
Total Approved Uses of Cash Flow	[V]=[T]+[U]	[V]=[T]+[U]
Residual Receipts	[W]=[S]-[V]	[W]=[S]-[V]
Residual Receipts Due to MOHCD	[X]=1/2*[W]	[X1]=0.652*0.5*[W]
Residual Receipts Due to HCD**		[X2]=0.348*0.5*[W]
Distribution to Borrower	[Y]=1/2*[W]	[Y]=0.5*[W]
Final Balance	[Z]=[W]-[X]-[Y]	[Z]=[W]-[X1]-[X2]-[W]

Definition of Project Expenses in funding agreements usually include [O], [P], [R], AND [T].

\*\* Amount calculated based on MOHCD's Residual Receipts Policy. Each lender will be paid according to its own calculation, so long as doing so would not result in a reduction in the amount payable to MOHCD.

* Sample MOHCD & HCD Capital Loan	Pro Rata Split
MOHCD Capital Loan	\$15,000,000 65.2%
HCD Capital Loan	\$8,000,000 34.8%
Total Soft Debt	\$23,000,000 100.0%