



# City of Palo Alto

## City Council Staff Report

(ID # 11384)

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**Report Type: Consent Calendar**

**Meeting Date: 8/10/2020**

**Summary Title: Palo Alto Gardens Refinance Agreement (648 San Antonio Road)**

**Title: Approval and Authorize the City Manager to Execute Necessary Agreements Subordinating the City's Interests in the Palo Alto Gardens Multiple Family Residential Property at 648 San Antonio Road to Facilitate Refinancing of the Affordable Housing Development**

**From: City Manager**

**Lead Department: Planning and Development Services**

### **Recommendation**

Staff recommends that Council approve and authorize the City Manager to execute necessary documents to subordinate the City's loans and regulatory agreements for the affordable housing development at 648 San Antonio Road (known as Palo Alto Gardens).

Staff further recommends, consistent with the City's "Affordable Housing Fund Guidelines" adopted in 2015, that the City Manager be authorized to approve any subsequent requests for subordination related to the property at 648 San Antonio Road (Palo Alto Gardens).

### **Executive Summary**

The Mid-Peninsula Housing Coalition (Mid-Pen) seeks to refinance the primary loan for Palo Alto Gardens, which is located at 648 San Antonio Road. The loan financed the acquisition and rehabilitation of the 156 affordable units at Palo Alto Gardens. Mid-Pen selected a lender, Walker and Dunlap, and made a formal request for the City to subordinate their loans on July 9, 2020 (Attachment A).

City loans and regulatory agreements are currently subordinate to the primary loan for the purchase and development of the property. With this action, the City would agree to maintain a subordinate position to the new, refinanced loan.

Typically, Council delegates the authority to subordinate loans to the City Manager. That did not happen in this case. Therefore, the request for subordination to the refinancing has been brought forward to the City Council for approval. This request includes allowing the City Manager to approve any future subordination requests for this property (Attachment B).

## **Background**

The City of Palo Alto receives funds annually from the US Department of Housing and Urban Development (HUD) as an entitlement city under the Community Development Block Grants Program (CDBG). In order to receive these Federal funds given to improve physical, economic, and social conditions in the community, the City must prepare a strategic five-year plan (Consolidated Plan) and approve an Annual Action Plan that confirms planned appropriations.

During the 2015-2020 planning period, increasing affordable housing opportunities was a top priority. This remains a top priority today. Given the challenges of constructing new affordable housing coupled with decreasing CDBG funds, the City focused on rehabilitating existing affordable housing stock in need of repair. The rehabilitation of 156 units at Palo Alto Gardens represents the execution of this strategy.

In 1999 Mid-Pen purchased Palo Alto Gardens, an existing, 156-unit apartment complex. Over the years the City has approved loans to Mid-Pen to facilitate the renovation of the property in 1999, 2016 and 2017. The total amount loaned from City CDBG funds is \$771,193. Council approved these loans in the Fiscal Year (FY) 2015-16 and FY2016-17 Annual Action Plans that implement the City's 2015-2020 Consolidated Plan for local implementation of the city's CDBG obligations. These loans were included in the Annual Action Plans for appropriation in 1999, 2016, and 2017.

## **Discussion**

The Mid-Pen Housing Corporation is requesting to refinance the Palo Alto Gardens project at this time to take advantage of historically low mortgage interest rates. The current lender, Walker and Dunlap, is offering just under 3% for a 30-year loan. The refinance will also provide for some additional rehabilitation at the property.

HUD allows the refinance of projects using their funds after 10 years. The original primary loan for this project was financed in 1999. The refinance of the primary loan will not affect the continuation of these 156 units as affordable housing. Nor would the 40-year repayment requirements of the City's loans be affected.

The Palo Alto Gardens Project provides 156 affordable housing units for both senior citizens and families. There are 31 units for very low income and 123 units for low income households. Twenty-five units are available to those with Section 8 vouchers. These 156 units and income levels assigned would be assured with the subordination agreement.

## **Timeline, Resource Impact, Policy Implications**

The refinance of the primary loan on this property and subordination of the City's loans is consistent with the City's current adopted 2020-2025 Consolidated Plan program and with the Annual Action Plans for funding planned projects.

**Stakeholder Engagement**

This request was made by Mid-Peninsula Housing Corporation with assurances included that these units will remain affordable under the provisions of the new loan. There have been no public comments on the request.

**Environmental Review**

Refinancing and the subordination of the city's loans are not a project under CEQA.

**Attachments**

Attachment A: Mid-Peninsula Housing Corporation letter to City of Palo Alto, July 9, 2020 requesting subordination of city loans.

Attachment B: Affordable Housing fund Guidelines, Approved by City Council on August 17, 2015, Resolution No. 9539.

**Attachments:**

- Attachment A: Palo Alto Gardens Refinance Letter 7-9-20
- Attachment B: Affordable Housing Fund Guidelines



July 9, 2020

Jonathan Lait  
Director of Planning and Development Services  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 94301

Re: Palo Alto Gardens

Dear Jonatha,

This letter is in reference to the refinance plan for Palo Alto Gardens (the "Property"). The Property is a 156 unit multi-family affordable housing community located in the City of Palo Alto serving low-income families. It was originally built in 1973 and substantially rehabbed with tax credit financing in 1999. The Property was also financed with tax exempt bonds issued by the Association of Bay Area Governments (ABAG) and \$100,000 in Community Development Block Grant (CDBG) funds from the City of Palo Alto. In 2017, the Property received another \$671,193 in CDBG funds from the City to improve landscaping, irrigation and sidewalk.

The Property is owned and operated by MidPen Housing Corporation, a nonprofit affordable housing developer and social services provider serving the greater Bay Area region. MidPen has been in business for 50 years, expanding affordable housing and serving low-income populations. With each of MidPen's 120+ affordable properties, the core mission is to preserve high-quality affordable housing for populations in the most need.

As part of the refinance, MP Palo Alto Gardens LLC (the "Owner") will pay off the tax exempt bonds and obtain a new Freddie Mac loan through Walker & Dunlop in the approximate amount of \$21,450,000. The projected closing date of the refinance is end of September 2020. The Property then will undergo a rehab sometime in 2021, delayed to avoid disrupting residents during the COVID-19 crisis.

The City CDBG loans are secured by deeds of trust and regulatory agreements which are subordinate to the bond loan from ABAG. As part of the refinancing, Freddie Mac requires and we are asking that the City subordinate its deeds of trust and regulatory agreements to the new first mortgage lender. We understand the City will need to take the proposal to the City Council before August 10<sup>th</sup>, 2020. For that reason, we have provided you with a form of Subordination Agreement from the lender for review and comments.

Please let us know if you have any questions. MidPen is pursuing the refinance to take advantage of the current low interest rate environment which will benefit the Property and allow us to perform some rehab work. As the lending market has been changing rapidly, we are in a tight time-line to close the refinance and lock the interest rate. We look forward to a successful closing and we will coordinate with you as needed to present the proposal to the City Council.

My email address is 650-393-9768 and my phone number is [amahmud@midpen-housing.org](mailto:amahmud@midpen-housing.org).

Sincerely,

*Aditi Mahmud*

Aditi Mahmud  
Senior Project Asset Manager

# **City of Palo Alto**

## **Affordable Housing Fund Guidelines**

Approved by the City Council on August 17, 2015  
by Resolution No.9539

### **A. Definition of the City of Palo Alto's Affordable Housing Fund**

The Affordable Housing Fund is a local housing trust fund established by the City Council of the City of Palo Alto, California to provide financial assistance for the development, acquisition and rehabilitation of housing affordable to extremely low, very low, low and moderate income households that live or work in the City. The City currently administers five distinct Sub-Funds for affordable housing that together comprises the City's Affordable Housing Fund. The BMR Emergency Fund has the sole purpose of preservation of the BMR ownership housing stock, whereas the other four funds have the broader purposes listed above.

- 1) Commercial Housing Fund
- 2) Residential Housing Fund
- 3) Community Development Block Grant (CDBG) Housing Fund
- 4) Home Investment Partnerships (HOME) Fund
- 5) Below Market Rate (BMR) Emergency Fund

These Administrative Guidelines summarize the City's goals, policies and priorities for both the overall Fund and the Sub-Funds. These Guidelines cover eligible projects, eligible and ineligible costs, funding criteria and priorities, typical loan terms, application process and administrative procedures.

### **B. Program History, Summary and Description**

#### **1. Commercial Housing Fund**

In 1977, the City of Palo Alto began requiring affordable housing mitigation payments on large industrial and commercial projects under its environmental review authority under the California Environmental Quality Act (CEQA). Mitigation payments were deposited into a separate account and the funds were used exclusively to assist in the development of new housing units, with most units affordable to very low and low-income households. Originally, this fund was named the Industrial – Commercial Account; later it was renamed the Commercial Housing In-Lieu Fund. It is now to be called the Commercial Housing Fund.

In 1984, the City Council adopted Chapter 16.47 of the Palo Alto Municipal Code requiring that all commercial, retail, hotel and industrial projects pay an affordable housing mitigation fee on net new square footage as a condition of project approval. In March 2002, the Council increased the fee rate from \$4.21 to \$15.00 based on updated nexus study findings; the current fee is much less than the full cost of affordable housing impacts. The fee rate is adjusted annually to reflect inflation and is currently \$19.85 per square foot. Collection, administration and reporting concerning the commercial housing mitigation fee is consistent with provisions of the State's Mitigation Fee Act (Sections 66000 et seq. of the California Government Code). The fees collected must be utilized in ways that preserve or increase affordable housing for Palo Alto's

workforce.

Since the Fund's inception, Palo Alto's Commercial Housing Funds have been used by developers in combination with other State and federal housing programs, such as the Low Income Housing Tax Credits, project-based Section 8, HUD Section 202 and Section 811, HOME, AHP and the Multi-Family Housing Program (MHP).

## **2. Residential Housing Fund**

Starting in 1974, the City required developers of market-rate housing to include below market rate (BMR) housing units in housing developments containing more than a minimum number of units. At that time, Palo Alto also started collecting housing in-lieu fees from small projects, for fractional units and for residential developments where it is infeasible to provide below market rate units on-site. Based on a court decision in 2009, this inclusionary housing program and in lieu fee are currently applicable only to units produced for sale, rather than rental housing. (Like other jurisdictions, Palo Alto is seeking to address this issue by preparing a new nexus study, which will update impact fees for commercial and residential development projects where inclusionary units are not provided. It is also expected that legislation will be introduced to allow rental units to be subject to inclusionary requirements.)

Residential fees, along with interest earnings of the Fund and other miscellaneous revenues related to housing, are placed in the Residential Housing Fund. Examples of miscellaneous revenue sources have included proceeds from the sale of surplus public land, payments pursuant to housing development agreements, and repayment of loans made from the Residential Housing Fund.

The Residential Housing Fund may be used to provide funding for new housing development or for the conversion of existing housing to affordable housing through acquisition. The Fund may also be used for the rehabilitation and preservation of existing affordable housing. Throughout the history of the Fund, all housing assisted has been rental and most of the units have been affordable to very low and low-income households.

## **3. CDBG Housing Fund**

The City has been an entitlement recipient of federal Community Development Block Grant Funds (CDBG) since the creation of the program in 1974. Policies and priorities for the use of CDBG funds are stated in the HUD Consolidated Plan prepared by the City every five years. Historically, Palo Alto has allocated a large portion (typically 50%) of its annual CDBG grant for housing development activities. Any use of CDBG funds for housing activities must comply with the federal CDBG regulations (see CFR Section 570.200) as the regulations apply to Palo Alto's grant.

CDBG funds have been provided by the City to non-profit organizations for housing activities such as land acquisition for housing construction, housing pre-development costs, acquisition of existing rental apartment buildings, rehabilitation of rental units, construction or rehabilitation of shelters and transitional housing facilities for homeless persons, preservation of HUD-assisted rental housing, and acquisition and rehabilitation of group housing for persons with disabilities.

#### **4. Home Investment Partnerships (HOME) Program and Program Income Fund**

The City does not receive federal HOME funds on an entitlement basis from HUD. In 2014 the City joined the Santa Clara County Home Consortium (SCCHC) for the period July 1, 2015 and June 30, 2018. Participation in the HOME consortium does not guarantee the City a direct allocation of HOME funds. Instead, through this effort the City of Palo Alto has become a participating jurisdiction and serves as a partner in bringing in additional funding into the County to help address regional affordable housing needs. Applications will be directly submitted through the County's request for proposal process for available HOME funds. It is anticipated that funding through the SCCHC for the first two years of the agreement will be available for pre-development, development, construction, acquisition, preservation and substantial rehabilitation of affordable, permanent or transitional, housing units. During the third year of the agreement, the SCCHC may choose to implement a Countywide Tenant Based Rental Assistance (TBRA) program. The County will only fund a project that has the local support of the City. Therefore before a project can be considered by the County for funding under the SCCHC, staff will present the proposed project as part of the CDBG annual action plan and budget. This will provide the City Council with the opportunity to determine local support.

Certain nonprofit organizations known as Community Housing Development Organizations (CHDOs) may also apply for funding from State HCD for housing projects located within Palo Alto. The City received one HOME grant from 1992 HOME funding for the Barker Hotel project. Proceeds from HOME loan repayments must be deposited into a HOME Program Income Fund and used in accordance with the HOME program regulations.

#### **5. Other Funds**

**BMR Emergency Fund:** On September 9, 2002, the City Council adopted Ordinance 4761 together with the “Assessment Loan Program: Criteria, Need, Priorities, Definitions and Loan Terms” to establish the “Below Market Rate Program (BMR) Emergency Fund”. The Fund was created to preserve and maintain the City’s stock of BMR ownership units and to assist owners with low incomes and/or very limited assets pay for large mandatory assessments for capital repairs and improvements. An appropriation transfer of \$150,000 from the Residential Housing In-Lieu Fund provided the initial funding.

### **C. Eligible Housing Types, Projects and Activities**

#### **1. Housing Types**

Palo Alto’s Affordable Housing Fund revenues will primarily be used to assist the following types of affordable housing:

- Rental housing, typically apartments (new and existing)
- Rental housing with supportive services for elderly and special needs populations
- Single room occupancy (SRO) rental units
- Transitional rental housing
- Group homes serving special needs populations

- Shared housing, co-housing, mobile home parks and other special or innovative housing products
- Below Market Rate ownership housing with resale deed restrictions

Some affordable housing activities such as down-payment assistance for home purchases and rehabilitation loans to low-income single-family homeowners are eligible, but either have never been offered, or in the case of rehabilitation loans, were discontinued.

## **2. Eligible Projects and Activities for Each Fund**

Commercial Housing Fund: Historically City policy has restricted the Commercial Housing Fund for use in funding activities that increase Palo Alto's affordable housing stock through:

- The construction of new housing units,
- The addition of new units to existing buildings, or
- The conversion of non-residential space to housing units.

Effective in August 2015, the Commercial Housing Fund may also be used for acquisition, rehabilitation, and preservation of existing housing whose long term affordability will be protected through deed restriction or other mechanism. Reasonable related administrative costs incurred by the City may also be paid from the Fund; examples of appropriate administrative costs include:

- Direct staff costs for the collection of housing mitigation fees and the administration of the fund,
- The cost of periodic consultant studies required to determine or update the fees charged, and
- Direct costs for the City to implement the affordable housing new construction program.

Residential Housing Fund: All housing types are eligible for assistance utilizing Residential Fund monies. This Fund may be used for new housing projects, for acquisition of existing housing and for rehabilitation of existing housing serving any household type. Because most of the monies deposited to the Fund are from in-lieu fees received pursuant to the City's BMR housing program requirements, a reasonable portion of the Fund's average annual revenue may be used for administrative costs of operating the BMR program. Historically, the City has used Residential Housing Funds for the costs of an annual contract with an outside organization for the administration of certain aspects of the BMR program.

CDBG Housing Fund: Uses of CDBG funds for housing must comply with the federal regulations, as stated previously. Broad funding priorities are established every five years as part of the City Council's adoption of the Consolidated Plan. The current plan covers the period from July 1, 2000 to June 30, 2005. Council also approves an Annual Action Plan with specific funding priorities and awards, usually in May. The annual CDBG funding cycle begins in the fall for funding for the fiscal year beginning the following July.

HOME Program Funds: Housing assisted with HOME funds must comply with the federal regulations for the HOME program. Given the State's once per year funding cycle, the focus of Palo Alto's affordable housing programs and the local housing market, the City intends to seek HOME funds only for major rental housing projects. HOME program income will also be used only for rental housing activities.

BMR Emergency Fund: This Fund may be used for activities related to the preservation of the City's BMR ownership housing stock. In September 2002, Council authorized:

- 1) An assessment loan program to provide deferred payment, low interest loans to assist BMR owners facing severe financial hardship in paying major capital assessments on their condominium homes. Regular monthly homeowner's dues do not qualify for these loans. The Director of Planning and Community Environment establishes specific eligibility criteria and procedures within the general guidelines set by Council.
- 2) Protection and preservation of units within the program from loss due to foreclosure, typically by legal action and / or direct purchase by the City;
- 3) Repair, holding, and resale costs of BMR units acquired by the City; and
- 4) Short-term loans to correct deferred maintenance or rehabilitate older BMR units at resale

Overall City Affordable Housing Loan Program Administrative Costs: From the inception of the City's affordable housing program in the late 1970's through 2003, the City has utilized the General Fund budget to cover staff administrative costs and third party direct costs, such as outside legal costs in administering and monitoring the loan program. The portion of the City's CDBG grant that may be used for staff costs is very limited and has historically been only sufficient to cover the cost of the CDBG program management staff. The General Fund has covered the cost of affordable housing activities, including staff work in the Planning Division, the City Attorney's Office and the Administrative Services Department.

### **3. Eligible Uses of Funds**

Commercial and Residential Housing Funds: All reasonable and necessary costs to the development of eligible affordable housing types may be funded from these two Funds. Examples of eligible costs are: feasibility studies, site evaluation, due diligence and environmental studies; all pre-development "soft" costs, including design, engineering, legal, costs necessary to apply for and close the project's permanent and construction financing and subsidies, demolition and clearance, land acquisition, acquisition of air rights or by long-term lease, acquisition of buildings, hard construction costs, rehabilitation, on and off-site improvements, developer fees, impact fees, permit fees, marketing, initial funding of replacement and operating reserves, buy down of interest rates on permanent and construction financing and furnishing of on-site facilities that will primarily serve project residents, such as community rooms, playgrounds and child care centers. City funding may be used at any stage of project development from site search to long-term permanent loans.

CDBG Housing Fund: The most commonly funded affordable housing activities in Palo Alto that are eligible under the federal regulations, are compatible with City housing priorities and the realities of the local housing market include:

- Acquisition of land for housing construction
- Acquisition of existing housing or buildings for conversion to housing
- Rehabilitation and major repairs of existing affordable rental housing projects

- Feasibility studies, environmental and pre-development activities related to the acquisition of land or buildings
- Relocation studies and benefits
- Pre-development costs for new housing (to the extent allowed under HUD rules)
- Clearance & disposition of land or buildings
- Construction of off-site utilities necessary for housing
- Installation of accessibility improvements
- Construction, acquisition and rehabilitation for transitional housing
- Acquisition and / or rehabilitation of group homes for special needs populations

#### **4. Specific Limitations, Restrictions and Ineligible Uses by Fund**

Commercial Fund: By Council policy, all costs must be directly related to the development of new housing units or to the preservation of existing housing whose long term affordability will be protected through deed restriction or other mechanism. In addition, because the Fund's revenues are linked (as required by State law) to the affordable housing needs of Palo Alto's work force, funded projects should provide housing for households likely to be participating in the work force. Housing with occupancy restrictions for individuals with statistically low work force participation (such as the elderly) will only be eligible for these funds in proportion to the extent that the intended residents typically participate in the work force. Furthermore, housing projects assisted with this Fund must be located within the City limits of the City of Palo Alto.

Residential Housing Fund: There are no special limitations or restrictions on the use of this Fund.

CDBG Housing Fund: Federal regulations prohibit the use of CDBG funds (except in unusual situations) for the actual construction costs of housing. Palo Alto is also very limited, by the way federal regulations are applied, in the amount of CDBG funds that can be provided for predevelopment costs of certain kinds of housing.

#### **5. Eligible Applicants; Project Sponsors; Developers**

The typical funding applicant and project sponsor is a nonprofit housing development organization, a social service nonprofit, or a public agency (such as a city, county or the Housing Authority of Santa Clara County). Eligible non-governmental applicants are nonprofit corporations and limited partnerships (in which an eligible applicant, or an affiliate of an applicant, is a controlling general partner), that have as part of its organizational purposes the development of housing or operation of housing programs for households of extremely low-, low, very low- or moderate-income. The City will consider applications for funding from for-profit housing developers for the Commercial and Residential Funds on a case-by-case basis, providing provisions for long-term affordability can be met.

All entities involved in a housing project, particularly the applicant, sponsor, consultants, developer, general partner, management entity, services provider and their principals or key staff, must have appropriate experience in affordable housing relative to the complexity, scale and type of project for which funding is sought. The City may require that applicants with insufficient

housing development or management experience secure a joint venture partner and / or agree to ownership and / or management of the housing units by an experienced affordable housing organization approved by the City.

The CDBG and HOME regulations should also be carefully reviewed by applicants for specific rules regarding the types of organizations that are eligible funding recipients.

#### **D. Funding Priorities, Housing and Household Types, and Evaluation Criteria**

##### **1. Priorities for Affordable Housing Funding (Commercial, Residential, CDBG and HOME Funds)**

- New construction of permanent rental housing, especially for households with children
- Preservation of existing, federally subsidized rental housing from conversion to market-rate
- New construction of permanent rental housing for households with special needs or disabilities
- New or existing permanent rental housing for homeless households or those at-risk of homelessness linked with supportive services
- Transitional rental housing linked with supportive services
  
- Acquisition and / or rehabilitation of existing affordable rental housing, including group and shared residential facilities, and mobile homes, especially for households with children and special needs households
- New construction of permanent rental housing primarily serving Palo Alto's low-income work force, including Single Room Occupancy (SRO) units
- New construction of permanent rental housing primarily serving extremely low-income elderly
- Acquisition and rehabilitation of existing market rate rental housing for conversion to affordable housing for extremely low-income, very low-income, and low-income households

##### **Other Priorities To Meet the City's Housing Production Goals as Stated in the Adopted Housing Element:**

Palo Alto also has important unmet housing production needs for low and moderate-income households as described in the City's Housing Element of the Comprehensive Plan. The BMR requirements are the City's principal method of addressing these housing needs. Developers must provide the required BMR units, and any BMR units that satisfy a public benefit agreement, within the market-rate project or off-site, without funding assistance from the City.

However, the City could consider providing funding to assist a developer provide additional BMR units (above and beyond the required units) if there was a significant or unique opportunity to substantially increase low and moderate income housing production, as follows:

- New construction of very low and low-income rental housing units within, or in connection with, market-rate housing projects under the City's BMR program requirements.
- New construction of moderate-income homeownership units, including units within market-rate projects under the BMR program. Two groups of households will be served: those with incomes between 80 and 100% of median income and households with incomes between 100 and 120% of median income.

## **2. Rent and Occupancy Standards: Income Targeting**

The primary objective of Palo Alto's affordable housing program is to increase the City's housing stock for those households with the most serious housing needs. To meet this objective, the City prioritizes and focuses the program and the available funding on serving extremely low, very-low and low-income households. Most rental housing projects funded with City Affordable Housing Funds also are funded by at least one, and often several, State, local or federal housing programs with rent and occupancy requirements. The City sets appropriate rent and occupancy requirements for each project giving consideration to factors such as:

- Financial feasibility
- Coordination with other funding rules, such as tax credits, HUD, State
- Availability of rental subsidies such as Section 8
- Needs and income level of project's target population (for example, elderly, homeless, working families, etc.)

A loan agreement, deed of trust, and note are prepared for all City housing loans. A long-term regulatory agreement must be recorded against the property as a condition of any City housing loan. This regulatory agreement will include the City's affordability and occupancy requirements. To the extent consistent with fair housing laws, local occupancy preferences for households living or employed within the City of Palo Alto may be required. The City may also require that existing rental assistance contracts be renewed and that the owner seek and give preferences to households receiving Section 8 assistance.

## **3. Evaluation Criteria for Project Selection and Underwriting Standards**

The following factors will be considered in evaluating applications for City housing funds. All factors will be assessed in relationship to the type of project being proposed and the difficulty and risk involved:

- Affordable Housing Fund Guidelines
- Housing needs and priorities stated in the most recent Consolidated Plan
- Relevant Housing Element and Comprehensive Plan goals, policies and programs
- Provision of a significant number of units (at least 30% of total units) affordable to extremely low-income households
- For family housing projects, whether there is a significant number of three or more bedroom units (at least 30% of total units)
- For special needs housing and housing for the homeless, the coordinated provision of supportive services available to the residents
- Lack of relocation of residential tenants and owners, especially low income tenants

- Experience & staff capability of the development team and management entity
- Financial strength and fiscal record of sponsor & developer
- Project readiness & ability to meet a reasonable schedule
- For major projects, the likelihood of securing other State, federal or local housing subsidies to leverage City housing funds
- Matching of City housing funds including sponsor and developer commitments of equity funding, in-kind staff support, partial waiver or deferral of developer fees and other matching funds or resources committed
- Reasonable cost per unit for type of housing proposed
- Reasonable percentage of City funding to total development costs
- Management plan and experience of management entity
- Rehabilitation projects require specific information regarding the scope of work, specifications, inspections and written cost estimates.

In addition to the above factors, funding applications involving new housing construction, demolition or conversion of use, especially where a site will require a rezoning, will be subject to City review for site-related factors such as the following. The City may require that a formal feasibility study be completed and reviewed by Council prior to application for, or approval of, site acquisition funding or development subsidies.

- Compatibility of the proposed use, density, height and other features with the surrounding neighborhood
- Suitability of the site for the proposed project
- Environmental review issues including traffic, access, parking and historic preservation
- Displacement and relocation issues
- Soil or groundwater contamination, including costs of remediation
- Provisions for site control, land acquisition costs and terms

#### **E. Loan Provisions and Terms**

Grants, Unsecured Loans: The City does not provide grants of housing funds, except for emergencies or very unusual circumstances and then only for small amounts, generally under \$50,000. Funding for preliminary feasibility studies may be provided subject to an unsecured loan, if the property, or site, is not owned by the applicant. If the project proceeds, then the feasibility loan will be combined with any further funding provided by the City into a permanent loan against the project. Non-profit organizations are the only entities eligible for grants and unsecured loans.

Expenditure Limits: There are no per unit or per project expenditure limits.

Leverage and Matching Funds: Project applicants should seek to maximize the leverage of the City funds and secure matching funds, to the extent feasible.

Security: All loans must be secured against the real property with a promissory note and recorded deed of trust.

Subordination of City Loan Documents and Regulatory Agreements: The City normally consents to subordinate its loan to the loans of construction and permanent lenders, when required for the developer to secure the necessary funding to complete the project. Subordination of the City's regulatory agreement to the loan documents and regulatory agreements of other lenders may also be approved, if absolutely necessary for the project to proceed to completion. All subordination agreements will be reviewed by the City Attorney's Office on a case-by-case basis. Typically, the City Council delegates the authority to approve subordination agreements to the City Manager, with the recommendation of the City Attorney. Applicants must provide the City with information as soon as possible about the subordination policies and requirements of the other lenders, funders and investors in the project.

Loan Terms: Typical minimum City loan terms are:

- 3% simple interest
- Deferred payment of interest and principal until senior debts, such as commercial lender mortgages, are repaid, or
- Annual payments from residual receipts (surplus cash flow)
- Principal and interest are due at refinancing (depending on structure) or at the end of the affordability term
- Projects with substantial numbers of Section 8 assisted units will usually require the funding of an affordability reserve fund

Loan interest rates, repayment provisions, and subordination provisions are negotiated on each project. Lending terms are tailored to the project's cash flow and the specific requirements and legal regulations of other financing sources. Higher interest rates, loan amortization or other loan terms may be a condition of loan approval, depending on the specifics of the project. The Council must approve loan and regulatory agreements and other documents or specifically delegate such approval to the City Manager.

Term of Affordability and Regulatory Agreements: Palo Alto's policy is that housing provided with City Affordable Housing Fund subsidies remain affordable for the longest possible period of time with the ultimate goal of permanent affordability. The use and occupancy restrictions for affordability must be included in legal agreements between the applicant / developer, property owner and the City and will be recorded against the property. For City housing funds, regulatory agreements that survive repayment of the loan are required for funding exceeding \$50,000. Where CDBG funds are used for housing, the federal regulations regarding the disposition or change in use of real property funded with federal assistance may apply when there is an early termination of the affordable housing use. The minimum term of the affordability controls are based on the source and amount of City funding, as follows:

## Minimum Affordability Terms for City Housing Funding

| Source of Loan Funds  | Term of Affordability and Use Restrictions | Other Provisions  |
|---|--|---|
| - Commercial & Residential Housing Fund Loans;<br>- HOME & CDBG funding (Loans of over \$150,000) | 55 years                                   | -With provisions for extended affordability, where possible<br>- Regulatory agreement required                        |
| - CDBG Housing Fund (Loans over \$50,000)   | 30 years                                   | - Regulatory Agreement required   |
| - CDBG Housing Fund (Loans under \$50,000)  | 5 years or more                            | - Subject to CDBG regulations regarding the disposition or change in use of real property acquired with federal funds |

### **F. Administrative Procedures and Responsibilities**

The Department of Planning and Community Environment is responsible for administering the City's affordable housing programs and the Affordable Housing Fund. The Administrative Services Department provides financial management, accounting and reporting services for the Fund. The Affordable Housing Fund is regularly audited by the City's outside auditor and may also be examined by the City Auditor's Office.

Exceptions and Revisions to the Affordable Housing Fund Guidelines: The City Manager may approve revisions to these Guidelines, or exceptions for a particular project, in order to comply with the regulations or requirements of other housing funding sources or with the regulations for the CDBG or HOME program, as necessary. Significant permanent revisions to the Guidelines shall be presented to the City Council for review and approval.

### **G. Application Process**

Applications for Affordable Housing Funds shall be submitted to the Department of Planning and Community Environment for review and recommendation by the City Manager to the City Council.

# **City of Palo Alto Affordable Housing Fund Guidelines**

## **Appendix**

### **A) Definition of Income Categories and Limits**

The City of Palo Alto generally uses the income categories and definitions established in State law. These income categories are derived from the HUD Area Median Income (AMI) for a four-person household. HUD publishes updated median income figures for major cities and metropolitan areas annually, usually in the early part of the year. HUD's median income figure for the San Jose PSMA covers all of Santa Clara County. The State HCD uses HUD's AMI figure to calculate income limits by household size for the following categories:

- Extremely low income (up to 30% of AMI)
- Very low income (up to 50% of AMI)
- Lower income (This category is equal to HUD's low income limit for the CDBG program. The calculation is prescribed by federal regulations and varies from year to year; it has ranged from about 65% to 80% of AMI.)
- Median Income (this category is equal to the 100% of median figure)
- Moderate Income (up to 120% of AMI)
- Above Moderate Income is a household with incomes exceeding the 120% of median income

For the BMR program, the City of Palo Alto uses as its "Low" Income limit the actual 80% of AMI figures, rather than the CDBG program definition of low income. Various State and federal housing assistance programs also target other income levels.

City program staff should be contacted for information describing current income categories and the maximum income for each household size within each income category.

### **B) Definition of Affordable Rents and Prices**

**Affordable Rent:** The City of Palo Alto generally using the methodology for the Low Income Housing Tax Credit Program to calculate a maximum affordable monthly rent at various levels of affordable housing. The Tax Credit Program rents are updated each year based on changes in the HUD AMI. Rents are published for different unit types by the number of bedrooms. Normally, if a project is regulated by another funding program such as the Tax Credit program, then the rents required by that program will be acceptable to the City.

**Affordable Sales Prices:** The City of Palo Alto sets price guidelines annually for newly built BMR units using the target income ranges for the program, current interest rates and estimates of other ownership costs such as homeowners dues, insurance, maintenance and property taxes.

**C) Application Forms**

The application forms to apply for funding from the Affordable Housing Fund are the same as the forms used for CDBG funding proposals together with the separate housing project proposal attachment. Contact City staff for copies of the forms and instructions or download them from the Internet at:

Web Site: <http://www.cityofpaloalto.org/cdbg/application.html>

**D) Program Staff Contact Information**

The Affordable Housing Fund is administered by:

Department of Planning & Community Environment Hillary Gitelman,  
Director  
City of Palo Alto  
5<sup>th</sup> Floor City Hall  
250 Hamilton Avenue  
Palo Alto, CA 94301

(650) 321-2441 (Department's main information number)  
(650) 329-2154 (Fax)

For information about the Guidelines, the Affordable Housing Fund, or the CDBG Program, please contact:

Erum Maqbool, CDBG Staff Specialist at  
Erum.Maqbool@CityofPaloAlto.org

**E) Income Standards and Rent Limits (Palo Alto & Santa Clara County)**

Contact City staff for current income standards and rents.

**F) Price Guidelines for New BMR Units (Palo Alto)**

Contact City staff for current price guidelines for new ownership and rental BMR units.