

**City Of Oakland**  
**Department of Housing and Community Development**

**Guidelines for Developer Fees  
on Housing Development Projects  
September, 2014**

**MAXIMUM DEVELOPER FEE**

**Tax Credit Projects**

At application for City funds, the total developer fee allowed for tax credit projects (both for 4% and for 9% projects) shall not exceed \$1,400,000, the amount currently allowable in tax credit eligible basis by TCAC for 9% tax credit projects (see TCAC Regulations Section 10327).

If, after receiving a commitment of City funding, the sponsor is able to leverage additional funding which allows a fee higher than the maximum shown above without a request for additional City funding, the City may negotiate and approve additional developer fees for the project.

**Non-Tax Credit Projects**

For projects not using tax credits, the following limits will apply:

First 20 units:	\$30,000 per affordable unit
Unit 21 to unit 40:	\$20,000 per affordable unit
Units 41 and above:	\$15,000 per affordable unit

Maximum fee:	\$1,400,000
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The fee for each project is subject to approval by the City of Oakland. Note that fees may also be capped by other financing sources.

Allowable fees for mixed-income projects, minor rehabilitation projects, or rehabilitation of existing affordable housing will be negotiated on a project-by-project basis. If the proposed project includes market-rate units, is an acquisition/rehab or refinance/rehab, please call Housing Development staff as soon as possible prior to submitting your application to discuss the allowable developer fee.

Developer fees are contingent upon satisfactory completion of the project. Where project costs exceed the approved budget, developers may be required to contribute a portion of the developer fee toward the excess costs.

**AMOUNT AVAILABLE FOR DEVELOPER ADMINISTRATION/OVERHEAD PRIOR TO COMPLETION:**

The lesser of the following:

- 50% of the total developer fee.
- \$400,000.

**SCHEDULE FOR DISBURSEMENTS**

The approved total developer fee for the project will be earned based on a schedule agreed upon by the City and the developer. The following standard schedule of disbursement applies, and is expected to be implemented.

*Administration portion (up to a maximum of \$400,000):*

1. 50% upon securing firm commitments for all financing and closing City loan.
2. Additional 50% upon start of construction.

*Remainder of development fee:*

1. 50%, or the balance of the fee, less a final disbursement of \$100,000 (for cost certification as specified below), upon full occupancy and closing of all permanent financing.
2. 50%, up to a maximum of \$100,000, upon City review and approval of final cost certification, and HOME Completion Report or tenant lease up report. (Please refer to Program Description and Requirements for additional details on the final cost certification process).

The following examples illustrate the disbursement schedule, for purposes of clarity:

	<i>Project A:</i>	<i>Project B:</i>
<b>Total Developer Fee:</b>	<b>\$1,400,000</b>	<b>\$360,000</b>
<u>Administration Portion (\$400,000 maximum):</u>	<u><b>\$400,000</b></u>	<u><b>\$180,000</b></u>
• 50% disbursed when all financing is committed and the City loan has closed	\$200,000	\$90,000
• 50% disbursed on start of construction	\$200,000	\$90,000
<u>Remainder of Development Fee:</u>	<u><b>\$1,000,000</b></u>	<u><b>\$180,000</b></u>
• The greater of 50% of the balance, or the balance less \$100,000, disbursed upon full occupancy and closing of all permanent financing	\$900,000	\$90,000
• The remaining balance disbursed upon City review and approval of final cost certification and HOME Completion Report or tenant lease up report	\$100,000	\$90,000

### **CONTROLLING DISBURSEMENT OF FEES IN COORDINATION WITH OTHER FUNDERS**

In the case of fees paid from syndication, the City will make the payment schedule a condition of approval of the syndication. When developer fees are funded by other lenders, the City may need to negotiate an "Inter-Creditor Agreement" or other similar agreement with the other lender or the investor to ensure that the above schedule is followed.

The applicant is required to provide the City disbursement schedule to all other funding sources. Subsequently, the City will assume that other funding sources are aware of the disbursement requirements, and that the preceding disbursement schedule will be implemented and followed, unless an "Inter-Creditor Agreement" has been finalized.

The City will hold an amount of its funds equal to the final developer fee payment until the final project cost certification is reviewed and approved, and the final HOME Completion Report (if applicable) or tenant lease up report is reviewed and approved.

### **COSTS INCLUDED IN "DEVELOPER FEE"**

Any funds disbursed to the developer or sponsor for administrative costs, provision of guarantees, or fees for services are considered to be a portion of the developer fee. Payments into reserves required by lenders or investors will not be included, but payment of fees for guaranteeing against operating deficits will be included. Specific examples of items to be treated as fees (in addition to any fees charged by the developer) include:

1. Administration
2. Staff costs, including development consultants (but not historic preservation, environmental, or syndication consultants)
3. Net worth guarantee fees
4. Marketing and/or rent-up supervision fees
5. Tax credit compliance guarantee fees
6. All credit consultant fees
7. Real estate brokerage fees paid to a related party
8. Loan brokerage fees paid to a related party
9. Processing agent fees
10. Developer overhead and profit
11. The cost of any personal guarantees
12. Reserves in excess of those customarily required by multi-family housing lenders.

### **TREATMENT OF "PARTNERSHIP MANAGEMENT" OR "ASSET MANAGEMENT" FEES**

A maximum Partnership Management fee of \$15,000 is allowed to be paid to the General Partner of a tax credit project for handling investor relations, tax preparation, etc. A maximum Asset Management fee of \$10,000 is allowed to be paid to the General Partner for all projects (including those without tax credits) for handling ongoing asset management tasks. The combined Partnership and Asset Management fee, excluding investor's fees,

should not exceed \$25,000 and may increase at up to 3% per year. Both fees may be paid from project cash flow after debt service and deposits to reserves. Where the fee is funded in advance from syndication proceeds, it should be placed in escrow and paid out over time to ensure a steady stream of income to cover these costs. A payment of 25% of the annual interest expense on the City's loan will be required to be paid prior to paying any deferred partnership/asset management fee.

***INCENTIVE MANAGEMENT FEE***

For nonprofits, if a project has no monitoring findings or other violations of City or other agreements, and if excess cash flow from operations is available after payment of operating costs, senior debt, deferred developer fee, and reserves, the developer/sponsor may keep 50% of the remaining cash flow as an Incentive Management Fee. If the project is owned by a partnership, the partnership agreement should clearly indicate that the Incentive Management Fee will be paid to the developer/sponsor. This additional fee must be approved by the City annually and may be used for projects and activities that would contribute directly to the borrower's (or its nonprofit affiliate's) activities relating to its affordable housing and community development activities only. If other lenders also require residual receipts payments the developer/sponsor's proportion of the excess cash flow will be reduced to 25%. The lenders will receive distributions of the remaining 75% of the excess cash flow based on relative loan amounts. Staff should be included in any negotiations of residual receipts loan payments.