RESOLUTION NO. 69,683-N.S.

RESCINDING RESOLUTION 64,394-N.S. AND ADOPTING NEWLY REVISED HOUSING TRUST FUND GUIDELINES

WHEREAS, the City began its Housing Trust Fund in 1990 for the purpose of supporting affordable housing development; and

WHEREAS, the Housing Trust Fund Guidelines establish the process, requirements and terms for allocating housing funding; and

WHEREAS, the Guidelines were adopted on April 21, 2009 with Resolution 64,394-N.S. and amended on April 5, 2016 with Resolution 67,430-N.S.; and

WHEREAS, staff drafted new Guidelines which retain essential terms while clarifying the language, and simplifying and streamlining the process for awarding funds, and these Guidelines were recommended for adoption by the Housing Advisory Commission at its November 12, 2020 meeting; and

WHEREAS, Council wishes to update the Housing Trust Fund Guidelines to ensure thoughtful and efficient allocations of housing funding.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the new Housing Trust Fund Guidelines attached as Exhibit A.

BE IT FURTHER RESOLVED that Resolution No. 64,394-N.S. is hereby rescinded.

The foregoing Resolution was adopted by the Berkeley City Council on January 19, 2021 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

Jesse Arreguin, Mayor

Attest:
Mark Numainville, City Clerk

City of Berkeley Housing Trust Fund and Small Sites Program Guidelines

The City of Berkeley's Housing Trust Fund (HTF) was established in 1990. The purpose of the HTF is to support the creation and preservation of affordable housing in Berkeley. Federal funds such as HOME Investment Partnerships Program (HOME) and the Community Development Block Grant (CDBG) are combined in the HTF with local funds such as revenue from mitigation fees on commercial development (Resolution 66,617-N.S.), new market rate housing (BMC 22.20.065 Affordable Housing Mitigation Fee and BMC 23C.12 Inclusionary Housing Ordinance), and condominium conversions (BMC 21.28). The City Council may approve additional sources of funding for the HTF at any time, such as the 2018 Measure O bond measure, or state and federal sources. The Council may allocate general funds such as those generated through Measure U1. The City's Housing Advisory Commission (HAC) advises the City Council on HTF allocations.

These HTF guidelines establish guidelines for the operation of the HTF. They are not a comprehensive statement of laws and regulations that apply to affordable housing funding and development in Berkeley. In addition to these guidelines, the operation of the HTF must comply with City procurement and contracting requirements as well as state or federal requirements when state or federal funds are used; in case of a conflict, City, State, and Federal requirements will prevail over the HTF guidelines. References to the City Manager in these guidelines will be interpreted as the City Manager or her/his designee. The City Manager may establish additional requirements to implement the HTF program through administrative guidelines and Notices of Funding Availability.

Section I: Threshold Requirements
Section II: Eligible and Ineligible Projects, Activities, and Costs
Section III. Affordability Targeting
Section IV. City Loan Terms
Section V. Process for City Reservations
Section VI. Other City Requirements
Section VII. Small Sites Program

Section I. Threshold Requirements

This section establishes eligibility requirements for applicants, projects, and costs. Applications that do not satisfy these threshold requirements will not be considered for funding.

A. Eligible Applicants

The Applicant must demonstrate enough prior experience and current capacity in housing development and management to successfully secure financing and entitlements, construct, complete, and operate the proposed project.

1. Applicant Experience

   To be eligible, the Applicant must demonstrate experience and capacity to complete the project. Experience includes the successful development and completion of THREE projects of a similar size and scope by the Applicant in California within the last 10 years. Capacity includes having existing staff assigned to the project who have worked on similar projects and whose résumés demonstrate their ability to guide the project through all stages of the development process. Applicants will be able to submit the following information on completed projects that they believe will qualify their capacity:

   a. Project name and address;
   b. Tenant tenure ownership or rental;
   c. Rehabilitation or new construction;
   d. Number of units and unit mix;
   e. Income levels served;
   f. Types of permanent financing;
   g. Project start and completion dates.

In addition, the following information is also required:

- List of current staff assigned to the project for which funding is requested, including their resumes;
- List of current board members, with resumes and city of residence;
- Audited financial statements for the past 3 years.

2. Joint Venture Requirements

   Potential Applicants without the required minimum amount of experience may enter into Joint Venture agreements with eligible Applicants in order to be eligible. Applicants who are submitting as a Joint Venture:

   a. Must provide a binding Joint Venture agreement at application establishing the roles and responsibilities of each entity in the partnership that is acceptable to the City; and
   b. Must demonstrate that the entity with the majority ownership interest in the Joint Venture both holds majority control of the Joint Venture and satisfies the Applicant experience requirements of these guidelines.

3. Construction Management Experience
   Applicant must demonstrate that:
   a. Past projects are not encumbered by unlapsed mechanics liens that were filed by or on behalf of workers with claims of unpaid wages or fringe benefits;
   b. Past projects are not related to unsatisfied final judgments from the California Labor Commissioner;

4. Property Management Experience
   a. The applicant or the Applicant's property management agent must have managed at least one completed project for at least 24 months and provide documentation of satisfactory performance review by any city or county agency from which the project received funding;
   b. If the proposed project includes a supportive services component designed for very low or extremely low-income families that need services linked to their housing in order to remain stable in the proposed housing project, the property management agent must also provide evidence of managing other housing projects with supportive services for at least 24 months and provide documentation of satisfactory performance review by any city or county agency from which the project received funding.

5. Supportive Services Provider
   Any project proposing the inclusion of special needs units must identify a supportive services provider that has at least 24 months of experience with the target population and can provide documentation of satisfactory performance review by any city or county agency from which the project received funding. Changes to the service provider after initial application are subject to approval from the City.

B. Site Control

At the time a development proposal is submitted, the applicant must demonstrate that it has, and will maintain until the land is acquired, site control of the property for which funding is being requested. Site control must be maintained for the full term of the City's loan and regulatory agreement (typically at least 55 years).

Acceptable forms of site control include fee ownership, an option to purchase or enter into a long-term lease dependent only on factors within the applicant's control, or a long-term lease.

Section II: Eligible and Ineligible Projects, Activities, and Costs

CDBG and HOME, currently significant sources of funds for the HTF, have more restrictive requirements than those described below. Some local funds may also have restricted uses, as may future state and federal sources. The City will work with borrowers to evaluate alternatives and to match funding sources with proposed activities as available funding permits. Borrowers must comply with all applicable federal requirements.

A. Eligible projects

Projects must be consistent with the HTF's purpose of supporting affordable housing. Development projects for rental occupancy or for operation as a no- or limited-equity cooperative are eligible, including:

- New construction, acquisition, and substantial rehabilitation of residential property for occupancy by lower income households;
- Permanent supportive housing;
- Transitional housing;
- Single room occupancy (SRO) units;
- Live/work units;
- Mixed use (commercial and residential) projects where residential uses are the majority of square footage;
- Conversion of non-residential space to residential use;
- Preservation of existing affordable housing.

Projects of 25 units or fewer that are not using Low Income Housing Credits will be reviewed for eligibility and consistency with the guidelines established for the Small Sites Program (Section VII).

B. Eligible Costs

Eligible Costs include all reasonable and necessary costs associated with:

- Property acquisition;
- Demolition;
- On-site improvements;
- Off-site utility connections;
- Construction and rehabilitation;
- Developing common areas and supportive service spaces serving the residents;
- Soft costs associated with the development and financing of the project, including environmental review costs;
- Reasonable developer fees;

- Operating reserve (typically limited to the initial marketing period, not to exceed 18 months). Longer periods will be considered for units set aside for homeless households consistent with City policy on homelessness;
- Capitalized replacement reserve;
- Relocation costs;
- Moving of a housing structure within the City limits, when the structure is a nonconforming use in a commercial or industrial zone or when necessary to preserve a residential structure, provided all other requirements of the fund are met.

C. Ineligible Costs/Uses

Ineligible activities include but are not limited to:

- Development of commercial spaces;
- Property tax penalties;
- Food/refreshments for any purpose;
- Costs associated with community meetings and neighborhood outreach, such as room rental and transportation;
- Community outreach mailings (including postage and printing of flyers or invitations);
- Costs associated with construction items or materials of a luxury nature;
- Furnishings (except where required for special needs projects);
- Most off-site improvements other than utility connections into the adjacent street;
- Borrower/sponsor administrative costs (other than included in the developer fee);
- Marketing events such as groundbreakings and grand openings.

D. Reasonable Development Costs

Applicant/borrowers must provide project budgets with sufficient itemized detail to evaluate whether the projected costs are sufficient and reasonable, and provide related documentation as needed. Prior to loan closing, the City will request and review documentation such as appraisals, cost estimates, contracts for professional services, and agreements covering reserves with regard to cost reasonableness. Proposed development costs must be sufficient to complete the project proposed and meet property standards for federal funding, as applicable.

In addition, projects must not exceed reasonable development costs. If project budgets submitted through the application are deemed unusually high development costs may request additional information. Projects with unjustified, above-average development costs may not be funded. If costs go up excessively after application and before loan

closing, the City reserves the right to reconsider the project's application and withdraw funding based on new information.

E. Appraisals

For loans that include acquisition costs, applicants are required to submit a recent appraisal of the project site and any existing improvements as part of the application. The appraisal must be completed by an appropriately licensed appraiser (currently, a California Bureau of Real Estate Appraisers (BREA) Certified General (AG) license).

F. Relocation

State and/or federal relocation law will apply for projects that will temporarily or permanently displace current business or residential occupants, and relocation assistance and benefits may be required which can add substantially to the project cost. Borrowers must provide a relocation plan acceptable to the City demonstrating relocation compliance prior to construction start.

Section III. Affordability Targeting

Projects that receive HTF funding will be subject to affordability and occupancy requirements. These requirements will be recorded against the property. Projects that have 25 or fewer units and are not using low income housing tax credits may qualify to use the affordability requirements in Section VII., the Small Sites Program.

A. Minimum Affordability

The following minimum affordability requirements apply. The City may refuse to consider applications that cannot meet the following requirements:

1. At least 60% of all units in an eligible housing project (City-Assisted Units) must have restricted rents:
    a. Not less than 20% of all the units must be affordable to households whose income does not exceed 30% of Area Median Income (AMI), and
    b. The remaining City-Assisted Units, approximately 40% of all the units, must be affordable to households whose income does not exceed 60% of AMI.
2. Restricted rents will be set based on the rent limit for the applicable income level and unit size published by the California Tax Credit Allocation Committee (TCAC), regardless of whether the project includes tax credit financing;
3. The remaining 40% of the units are not required to have restricted rents;
4. Borrowers may provide a larger percentage of affordable units or units restricted at deeper levels of affordability;
5. Income and rent restrictions will apply for the full length of the loan term and regulatory agreement, surviving loan repayment.

B. Occupancy requirements

The City's regulatory agreement (one of the required loan documents) will also establish occupancy requirements that restrict occupancy of subsidized units to households that meet income and other eligibility criteria.

C. HOME Restricted Units

Generally, the HTF affordability requirements require more units at lower affordability levels than the HOME program. Loan documents for projects receiving HOME funds will identify the project's HOME units and any applicable conditions.

D. City Funding in Combination with Rental Assistance Vouchers

- For units funded with local funds and occupied by tenants with tenant-based rental subsidies (i.e. Housing Choice Vouchers (Section 8), Shelter Plus Care or similar programs), borrowers may accept contract rents that exceed the

allowable rent level in the City's regulatory agreement, as long as the tenant portion is below the allowable rent limit;

- For units funded with HOME funds and occupied by tenants with tenant-based Housing Choice Vouchers/Section 8, borrowers may accept contract rents *only* up to the allowable HOME rent limit;
- For units funded with HOME funds and project-based rental assistance (such as project-based Section 8), owners can accept the maximum rent allowed under the rental assistance program provided that they are rented to a very low income household and the tenant contribution to rent is no more than 30% of the household income.

E. Annual Recertification of Tenant Income and City Monitoring

Borrowers are required to re-examine tenant incomes annually to ensure that tenants continue to meet the income requirements of this and other applicable funding programs. Rent schedules and utility allowances, including any increases, are subject to restrictions in the loan documents. Borrowers will be required to report on compliance with income and rent restrictions on an annual basis, and to make records available for on-site monitoring. The loan documents will address how over-income tenants will be handled, consistent with the project's funding sources. Decreased applicant capacity points may be awarded to project applicants who are not operating their properties in compliance with the applicable loan agreements and/or working with the City to resolve compliance issues in a timely way.

Section IV. City Loan Terms

HTF funding is provided as a loan, not as a grant. The City can fund three types of loans: predevelopment (short term), acquisition (long term with short term requirements), and development loans (long term). Any requests for forgiveness of these loans will be reviewed by the HAC and decided by the City Council upon a recommendation from the HAC.

A. Predevelopment Loan Terms
   1. Predevelopment loans will not exceed the predevelopment costs for the project.
   2. Predevelopment loan applicants are encouraged to request between $50,000 and $500,000. Loans of any size will be considered.
   3. At any point in time, predevelopment loan commitments should be 10% or less of the balance of HTF funds available at the time the request is considered in order to ensure adequate development funding for projects in the pipeline.
   4. Standard loan terms will be a five year term at 3% interest.
   5. The City Manager may approve variations to the standard terms prior to the issuance of an RFP based on market conditions, or for a specific project if the sponsor can demonstrate that the project would either be uncompetitive or ineligible for other funding sources without such a reduction.
   6. If permanent financing is provided through the HTF, the predevelopment loan will be added to the permanent loan, extending the term.

B. Acquisition Loan Terms
   1. The acquisition loan amount will not exceed 40% of the project's total costs unless City Council makes a finding that a higher level of funding is justified by the nature of the assisted project and the unavailability of alternative funding. In no event will acquisition loans exceed the acquisition and predevelopment costs for a project.
   2. At any point in time, acquisition loan commitments should be 40% or less of the balance of HTF funds available at the time the request is considered in order to ensure adequate development funding for projects in the pipeline.
   3. The standard acquisition loan terms will be 55 years at 3% simple interest.
   4. Project must secure financing and start construction within five years.
   5. The City Manager may approve variations to the standard terms prior to the issuance of an RFP based on market conditions, or for a specific project if the sponsor can demonstrate that the project would either be uncompetitive or ineligible for other funding sources without such a reduction.

C. Development Loan Terms

1. The development loan amount will not exceed 40% of the project's total cost unless City Council makes a finding that a higher level of funding is justified by the nature of the assisted project and the unavailability of alternative funding. In no event will the development loan exceed total development costs.
2. The standard loan terms will be 55 years at 3% simple interest.
3. The City Manager may approve variations to the standard terms prior to the issuance of an RFP based on market conditions, or for a specific project if the sponsor can demonstrate that the project would either be uncompetitive or ineligible for other funding sources without such a reduction.
4. Payments of interest and principal will be due on an annual basis from excess cash flow from operations after payment of operating costs, senior debt, reserves, and deferred developer fee.
5. The City will follow HOME program funding limits when determining awards of HOME funds.

D. Loan Documentation

City acquisition and development loans will apply affordability and occupancy requirements for a minimum of 55 years. All City loans will be evidenced by a promissory note secured by a deed of trust on the project. For predevelopment loans, an Assignment of Work Product may serve as security if Borrower has not yet acquired fee ownership or leasehold interest in the property and the City is unable to record a deed of trust, subject to a requirement to record a deed of trust at acquisition. A loan agreement will specify all Borrower obligations. Post-occupancy use restrictions will be enforced through a regulatory agreement recorded against the project's land and improvements.

E. Subordination

The City will not subordinate its affordability covenants (typically, the regulatory agreement) to the deeds of trust securing other lenders' financing, with the exception of State, Federal, and County funding sources (subject to City approval and to the ratio of debt to total development cost). The City Manager may review exceptions. The affordability covenants control, among other things, the maximum income of tenants of project units, and the maximum rents allowed for project units. The City deed of trust may be subordinated to other financing on a case-by-case basis.

F. Disbursement of Funds

Funds will be disbursed to borrower only for costs actually incurred. Payment for construction costs will be made on a progress payment basis, subject to approval of each draw request by the City. Disbursement of funds for construction is conditioned

upon the borrower having secured full funding commitments for the project. The loan agreement will include provisions for retention that will be withheld until the development requirements have been satisfied.

G. Additional Loan Requirements

1. Market Demand
   Projects should be planned and designed according to market demand. Demand for the type, location, and size of units at the proposed rents or sales prices must be documented at the time of application. Projects that receive HOME funds (or other projects if deemed necessary by the City Manager) are also required to submit a complete market study prior to loan closing, according to HUD requirements.
2. Cost Certification
   Borrowers must arrange for an independent cost certification on completion of a project. Approval of this certification is a requirement for the City's release of retention (City loan funds retained through construction pending completion).
3. Management, Marketing, and Tenant Selection Plans
   The City's loan agreements require borrowers to prepare management, marketing, and tenant selection plans acceptable to the City for each project prior to occupancy.
4. Resident Services and Special Needs Units
   Developments targeting special needs populations must provide a services plan showing the type and level of services to be provided for residents and how services will be funded. For rental projects, supportive and social service coordination reasonable for the population being served may be included as a cost paid by building operations. However, direct service provision may not be paid for from the building's operating funds unless the direct service is required by another funding source.
5. Environmental Review
   Projects may be required to pay for the actual cost of the required environmental review and to pay for Phase 1 and Phase 2 environmental studies, if needed, by a vendor approved by the City.
6. Minimum Equity Requirements.
   Profit-motivated borrowers (except for limited partnerships whose general partner is a nonprofit corporation) must provide equity equal to at least 10% of total project costs. The value of the project site may be used to meet the equity requirement. If the site has been owned for more than three years, the equity will be calculated on the basis of the current appraised value of the property, less outstanding debt. For sites which have been owned for less than three years, the equity contribution will be calculated on the basis of the actual acquisition cost of

the property, less outstanding debt. Equity investments generated by syndication of tax credits or deferred developer fees will not be considered as an equity contribution.

Non-profit borrowers are not required to provide equity.

7. Limited Partnerships Requirements.
   For projects proposed as limited partnerships, the City reserves the right to approve the limited partnership agreement prior to executing the HTF loan.
8. Monthly Updates.
   Upon commitment of funds from the City, borrower must provide written monthly updates to the City. Monthly updates will allow the City to anticipate upcoming approvals needed and to stay informed about efforts to move the project forward on schedule. If monthly updates are not provided in a timely manner, decreased applicant capacity points may be assessed for the next funding request submitted by the borrower. If HOME funds are awarded, monthly updates should include a schedule projection related to the four year completion deadline required by HUD.
9. Replacement and Operating Reserve Requirements.
   The City Manager may establish standards for replacement and operating reserves. Use of replacement and operating reserves is subject to prior review and approval by the City.

Section V. Process for City Reservations

Note that funds designated by the City Council specifically for the Small Sites Program will be administered according to Section VII. All other projects seeking HTF program funding, including Small Sites Program- eligible projects applying for funds outside of a Small Sites Program NOFA, , will follow the process below.

A. Predevelopment Loan Applications
   1. Applicants with documented site control and a feasible proposed development and operating plan can apply over the counter for a predevelopment loan at any time.
   2. Applications will only be considered if the amount of funding requested is no more than 25% of the funds available in the HTF at the time of application.
   3. The City will provide a predevelopment application form to be completed by applicants. The City Manager may reject an application if the applicant does not provide enough information to evaluate the proposal adequately or if the proposal is not consistent with threshold criteria, including applicant capacity (Section I) and proposed affordability (Section III).
   4. Applications that are accepted by the City Manager will be referred to the HTF Review Process (below).

B. Acquisition Loan Applications
   1. Applicants with documented site control and a feasible proposed development and operating financing strategy can submit an application for a site acquisition loan at any time.
   2. Applications will only be considered if the amount of funding available in the HTF exceeds the funds requested.
   3. The City Manager may reject applications that are incomplete or do not meet HTF threshold requirements
   4. Applications that are accepted by the City Manager will be referred to the HTF Review Process (below).

C. Development Loan Applications
   1. When there are sufficient funds in the HTF to warrant releasing a NOFA the City Manager will request authorization from the City Council to release a NOFA.
   2. When authorization is granted, the City Manager will prepare a NOFA establishing a competitive process and criteria for submission and review of applications.
   3. The City Manager will determine whether applications have satisfied the requirements of the NOFA, including timing requirements and completeness and may offer applicants additional time to provide incomplete items. If the City

Manager rejects any applications due to lateness or incompleteness, the applicant will be notified in writing.

4. Applications that are accepted by the City Manager will be referred to the HTF Review Process (below).

D. Projects at Risk

1. Projects that are imminent risk may apply for funds at any time. Projects that are imminent risk will include: projects with documented state and federal funding commitments that are at risk, previously-funded projects that are in construction, and previously-funded projects that have urgent health and safety needs.
2. Applicants are responsible for demonstrating and documenting
    a. The urgency of the need;
    b. The steps they have taken to avoid the need for additional City funds; and
    c. That no other funds are available to meet the need.
3. The City Manager will determine whether the documented need is sufficiently material and urgent to warrant consideration, and whether the applicant has sufficiently pursued alternatives prior to requesting City assistance.
4. Applications that are accepted by the City Manager will be referred to the HTF Review Process (below). If the City Manager determines that unusual, urgent conditions exist such that following the standard process would be a detriment to the City's interest in the project, the City Manager may elect to send a recommendation directly to the Council, or commit funds directly to projects that are eligible under the Small Sites Program guidelines.

E. HTF Review Process

1. Upon acceptance of applications during a funding round, the City Manager will prepare a summary of applications received. The summary will include the project sponsor, address, number of units, proposed affordability levels, and populations to be served, as well as information about the expected timeline for Commission review. The summary will be forwarded to the Homeless Commission, Mental Health Commission, Commission on Aging, and the Commission on Disability.
2. The City Manager will evaluate each funding application for feasibility and compliance with applicable requirements, and prepare a summary of the project and a technical analysis. Such evaluation may be completed by City staff or consultants.
3. The City Manager will provide the HAC with evaluation materials for each project. Typically the HAC will designate a HTF subcommittee to evaluate each project and make recommendations to the entire Commission.

4. The HAC may make a recommendation to the City Manager and/or City Council regarding whether to fund the application.
5. HTF funding recommendations, with the exception of Small Sites Program loans (Section VII)), are subject to City procurement guidelines. Funding recommendations that exceed the City Manager's authority (currently $50,000) will be referred to Council and loans within the City Manager's scope of authority will be determined by the City Manager. The City Manager may also choose to refer any loan application to the City Council.

F. NOFA Selection Criteria.

During a NOFA competitive process, applications will be evaluated based on how well they meet the five key factors identified below:

1. Community objectives;
2. Conformance with adopted plans and policies and current local priorities;
3. Applicant qualifications and experience;
4. Cost effectiveness and feasibility; and
5. HTF program and specific NOFA priorities.

Section VI. City Priorities

A. Sustainable Development

Applicants should incorporate energy and water efficient technologies and construction techniques into their developments to achieve the City's General Plan and Climate Action Plan goals and provide healthy, comfortable home environments with low utility bills for future tenants. The use of sustainable materials and technologies are promoted to minimize negative ecological impacts of the construction materials used and provide high indoor air quality for residents.

All newly constructed buildings must be all-electric, without natural gas infrastructure, in accordance with Berkeley's Natural Gas Prohibition (BMC Chapter 12.80). All projects must meet all locally-adopted building code requirements including the Berkeley Green Code (BMC Chapter 19.37, local amendments to CALGreen, Title 24, Part 11) and the Berkeley Energy Code (BMC Chapter 19.36, local amendments to the CA Energy Code, Title 24, Part 6) that are in effect at the time of building permit application. Landscaping must comply with California's Water Efficient Landscaping Ordinance (WELO). All projects are encouraged to incorporate green building features that qualify for a third-party green building certification such as GreenPoint Rated, LEED for Homes, ENERGY STAR Multifamily New Construction Program or ENERGY STAR Certified Homes, and WaterSense Labeled Homes.

Projects should take advantage of programs that provide financial incentives for deep energy and emissions savings. The City Manager may establish additional sustainability requirements.

B. Labor Requirements

Borrowers are responsible for compliance with all applicable labor laws and regulations, and for maintaining a record of their compliance.

1. First Source Employment Agreement (BMC 13.26)
   Borrowers must execute and implement a First Source Hiring agreement with the City of Berkeley and ensure that monitoring occurs during the development period.
2. Prevailing Wages
   Funded projects must include the payment of the General Prevailing Rate of Per Diem Wages, as defined in Title 8 of the California Code of Regulations, (Division 1, Chapter 8, Subchapter 3, "Payment of Prevailing Wages Upon Public Works") section 16000, to all workers who perform work that is covered by a State-published prevailing wage determination. This requirement was established by Resolution 54,533-N.S., adopted on November 23, 1988, which requires

payment of State Prevailing Wage on all City-funded construction. More resources on state prevailing wage are available at : https://www.dir.ca.gov/Public-Works/PublicWorks.html

3. Registration with the Department of Industrial Relations.
   Note that Housing Trust Fund program projects are generally exempt from the DIR registration requirements for public works projects in Labor Code 1771.1 and 1771.4 since they are usually exempted from the definition of public works projects in Labor Code 1720(c)(5)(E).
4. While HTF projects are typically exempt from apprenticeship requirements in the state Labor Code since they are exempt from the definition of public works in Labor Code 1720(c)(5)(E), Borrowers are encouraged to employ apprentices to advance workforce development. When apprentices are employed, ratios consistent with Labor Code 1777.5 must be followed.
5. Projects funded with HOME or CDBG may be subject to federal Davis-Bacon prevailing wages. For projects subject to these requirements, the City may require borrower to hire a third party consultant, or the City may charge a fee for labor compliance monitoring. HUD makes detailed information about Davis-Bacon requirements available online at: https://www.hud.gov/program_offices/davis_bacon_and_labor_standards

C. Accessibility

Funded projects must comply with applicable federal, state, and local accessibility requirements. Applicants are encouraged to maximize accessibility by going beyond the minimum accessibility standards and to incorporate universal design features.

D. Units for Homeless Households and Those at Risk of Homelessness

The EveryOne Home Plan to end homelessness in Alameda County aims to create affordable housing units for the unhoused. The EveryOne Home website provides additional information and resources at http://www.everyonehome.org

The City of Berkeley encourages all projects to include as many units as possible to contribute to the City's goal of creating housing opportunities for all who are homeless in Berkeley. Units dedicated to serving homeless households will be required to use the Countywide Coordinated Entry System to identify tenants.

Section VII. Small Sites Program

The guidelines in this section will be applied to smaller, non-tax credit projects seeking funding through the HTF process as well as those smaller, non-tax credit projects applying after the City Council sets aside Small Sites Program funds. On October 2, 2018, the City Council approved guidelines for the Small Sites Program, which was established to fund the acquisition and renovation of small multifamily properties. This section describes the process and criteria for the Small Sites Program. The expedited, over-the-counter SSP process will be followed only when the City Council designates funds for the SSP; the other criteria in this section will be applied to any eligible project that applies during a HTF funding round.

A. Purpose.

The purpose of the SSP is to support:

1. Acquisition and renovation of occupied, multifamily rental properties;
2. Conversion of rent controlled properties to restricted affordability; and
3. Potential conversion to limited- or non-equity housing cooperatives (LEHC).

The following criteria apply ONLY when the City Council designates funding for the SSP program:

B. Process. The critical difference between the HTF and the SSP is that funds designated by Council for the SSP will go through a fundamentally different allocation process. With Resolution 68,623-N.S. and Ordinance 7,630 adopted in October 2018, the City Council approved an over the counter process whereby allocations of Small Sites Program funding, consistent with the adopted program guidelines, can be approved by the City Manager. When City Council designates funds for the SSP, funds will be made available via the following process:

1. Release NOFA and accept applications on a first-come, first-served basis (no due date);
2. Applications will be reviewed in the order they are received;
3. For applications received within 10 business days of each other, the City Manager will apply the priorities criteria below to determine funding priority;
4. Project review for consistency with guidelines by the City Manager;
5. Approval by City Manager or her designee only (no subcommittee, HAC, or Council approval);
6. Aim for review, approval, and project funding within 90 days of application.

C. Priorities in the Event of Multiple Applications Received within 10 Days of Each Other.

1. Buildings at imminent risk of Ellis Act eviction;
2. Occupied projects;

3. Existing residents include vulnerable populations (families with minor children, elderly, disabled, and catastrophically-ill persons);
4. Buildings housing residents with lowest incomes;
5. Buildings that require the lowest amount of subsidy per unit;
6. Projects preserving the greatest number of affordable units;
7. Buildings with a potential for conversion to LEHCs.

The following criteria will be applied to any Eligible Project that applies for SSP funds or whose application is considered during an HTF funding round:

D. Eligibility Criteria.
   1. Projects must include acquisition and rehabilitation of a rental property.
   2. Projects must include 2 to 25 units.
   3. Site control is not required at the time of application but funds will only be released at the time of or after fully documented acquisition.
   4. All residential units must meet City's definition of 'dwelling unit' (BMC 23F.04.010) and fully conform to applicable local codes. If a project includes occupied, unpermitted units, legalization of the units must be included in the project scope.
   5. Properties with commercial spaces are eligible, so long as the majority of the project is residential and
      a. Commercial space counts as one unit for City subsidy calculation;
      b. City funds cannot be used for tenant improvements.

E. Project Financing
   1. Projects that include Low Income Housing Tax Credits are not eligible for SSP.
   2. The project must have a bank or CDFI loan in addition to the funds requested by the City and any equity participation by the borrower/buyer.
   3. City will size its loan based on project need: acquisition cost, rehabilitation costs, and developer fee, not to exceed the maximum subsidy limits. SSP projects are not subject to a City loan cap of 40% of total project financing.
   4. Maximum City Subsidy:
      a. $300,000 per unit for buildings of 10-25 units;
      b. $375,000 per unit for buildings of 2-9 units; or
      c. $175,000 per bedroom for group living accommodations or single room occupancy (SRO) housing.
   5. The standard SSP loan term is 55 years, with a 55-year regulatory agreement period.
   6. Repayment of the City loan will be through residual receipts;
      a. 1/3 of the residual receipts may be retained by the borrower;
      b. For any year when the replacement reserve balance is less than 1.5 times the original capitalized replacement reserve, the remaining 2/3 must be

deposited into the project's replacement reserve account, if the funding sources allow.;

c. For any year when the replacement reserve balance is greater than 1.5 times the original capitalized replacement reserve, the remaining 2/3 must be distributed to the City for debt repayment.

F. Renovation Scope
1. Renovations should address health and safety items, and systems with a remaining useful life of 10 years or less; and
2. Renovation scope and costs must be substantiated by a recent physical needs assessment (PNA) of the property.

G. Project Proforma
1. Project proformas must demonstrate a positive cash flow for 15 years after project completion, and must demonstrate sufficient cash flow to support debt and the ability to refinance or repay debt in a timely manner without additional resources from the City.
2. Proformas must show a 5% residential vacancy rate and a 20% commercial vacancy rate.
3. Reserve deposits must comply with the following:
    a. Operating reserves: None unless balance drops below 25% of prior year's operating expenses.
    b. Replacement reserves: The higher of
        i. the amount needed according to the approved 20-year PNA or
        ii. $400 per unit per year ($350 per unit for projects with 11+ units).

H. Project Budget
1. The acquisition price must be substantiated by an appraisal showing both the fair market value and the anticipated restricted value.
2. Fees charged to project must be reasonable, subject to review by the City Manager.
3. The developer fee is limited to $80,000 plus $10,000 per unit, not to exceed 5% of project costs excluding the developer fee.
4. Construction management fees may not exceed $25,500 per project, and will be reimbursed at a rate proportional to the predevelopment or development work completed to date.
5. The construction pricing must be based on the payment of State prevailing wage.
6. Project budget must include a 15% construction contingency. If the project has leftover construction contingency, 50% of the remaining funds will be deposited into the replacement reserve account.
7. Project must include a 15% soft cost contingency.
8. Project budgets must include the following capitalized reserves:
    a. Operating reserves: 25% of budgeted Year One operating expenses

b. Replacement reserves: The greater of $2,000 per unit or the amount necessary to pay replacement costs for the next 10 years, as specified in an approved PNA.
c. Vacancy reserves: the monthly rent for units (residential and commercial) vacant at acquisition multiplied by the number of months expected to remain vacant during development and lease-up.

9. If the source of funds allows, up to $100,000 in unspent City loan funds may be retained by the borrower for deposit into the project's reserve accounts. Subject to final building permit or other documentation of borrower's completion of the approved renovation scope.

I. Affordability
   a. Affordability will be measured at the building level, with the goal of achieving an average of 80% of the area median income (AMI) for the project. The City's loan documents will include guidelines for how this will be calculated. The City may alternatively approve limiting all incomes to 80% of AMI.
   b. Borrower must be willing to accept tenants holding Section 8 or Shelter Plus Care rental assistance vouchers.

J. Existing Tenants
   1. Borrower must educate tenants on the conversion from rent control to restricted affordability
   2. At loan closing:
      a. 75% of existing households must acknowledge their agreement to participate (in the conversion to restricted affordability) in a format approved by the City.
      b. 66% of existing households must income-certify for the property to be eligible for the program, either on average or individually, depending on the proposed affordability requirements. Up to 34% of existing households may be over income (above 120% AMI) or refuse to certify.
   3. Within 60 days of loan closing, borrower must submit a relocation plan to the City for approval, outlining plans for the temporary relocation of residents during renovations, if needed.
      a. Relocation shall not exceed 90 days.
      b. Borrower must hire a relocation consultant or similar staffing to provide advisory services to tenants.
      c. Notice will be given to tenants 90 days and 30 days prior to relocation, at a minimum.
      d. Commercial relocation shall be offered in the form of temporary suspension of rent plus a negotiated lump sum to ensure that the business is able to withstand the relocation period.

K. Applicant Requirements
   1. Applicant must have completed one comparable project, and have demonstrated capacity to undertake the proposed project.
   2. City and City-controlled entity would be eligible to directly purchase properties under the program.

L. Exceptions to Program Requirements
   1. Will be reviewed on a case-by-case basis, and could be approved by the HHCS Director only if they are consistent with the program purpose, project feasibility, and sustainable housing operations. The HHCS Director may determine that certain requested exceptions would require HAC review and Council approval.
   2. The source of the City's funds may impact certain program requirements, if the funding carries limitations on its uses.

M. Limited and Non-Equity Housing Cooperatives
   1. For projects proposing LEHCs, include successful experience with LEHC conversions as a threshold requirement for applicant experience.
   2. Properties acquired with the intent of converting to LEHCs should be considered as homeownership projects.
      a. Existing tenants have the right to remain in units as tenants.
      b. Borrower is required to assist tenants in obtaining financing to become owners, if needed.

Editing notes:

Add index

Style notes for editing-
Limit references to "applicant" and "borrower" avoiding other terms such as sponsor and owner
Only refer to City Manager, not staff, HHCS or her designee