



**CITY OF CLOVIS  
AFFORDABLE HOUSING TRUST FUND (HTF) PROGRAM  
PROGRAM GUIDELINES**

This Affordable Housing Trust Fund Program (Program) is established as required to implement the terms of the Judgment entered by the court on March 19, 2024, in the Martinez v. City of Clovis case (Fresno County Superior Court Case No. 19CECG03855) and is intended to assist in the development of affordable housing units for low-income households and to enable the City to apply for matching funds from the State of California Local Housing Trust Fund Program as administered by the California Department of Housing and Community Development to provide safe and quality affordable housing for lower income households in the City of Clovis.

Funding for the Housing Trust Fund will be obtained from 1) City funds deposited into the Housing Trust Fund, 2) real property dedicated for use within the Housing Trust Fund Program, 3) State of California Housing Trust Fund Matching Dollars, 4) In Lieu fees paid through a Mixed Income Housing Ordinance, 5) interest earned on any funds on deposit, and 6) other discretionary sources the City may identify.

**I. ELIGIBLE USES:**

- A. Program funds may be used to provide construction loans and/or permanent financing loans at simple interest rates of no higher than 3 percent per annum for payment of predevelopment costs, acquisition, construction, or rehabilitation associated with Affordable rental housing project, Emergency Shelters, Transitional Housing, Permanent Supportive Housing, or homebuyer/homeowner projects to purchase for-sale housing units
- B. The City may utilize a portion of HTF funds, not to exceed 5 percent of funds available for staff/administrative expenses per project.
- C. Eligible new development housing units include multi-family and single-family housing units constructed after this Program is established and must be subject to a recorded affordability covenant restricting the unit(s) as affordable housing as provided herein.

**II. INELIGIBLE USES:**

Housing Trust Fund Program monies cannot be used to pre-fund units under the City's Affordable Housing Development Impact Fee Deferral Program.

### **III. PROPOSED NUMBER OF UNITS:**

The Program will seek to maximize the impact of HTF Program monies by selecting project(s) for funding that will develop the maximum possible number of units in consideration of the HTF Program funds requested.

### **IV. PROGRAM LOAN REQUIREMENTS:**

- A. The Program is intended to be administered as a loan program for eligible predevelopment costs, acquisition, construction, or rehabilitation associated with Affordable rental housing project, Emergency Shelters, Transitional Housing, Permanent Supportive Housing, or homebuyer/homeowner projects to purchase for-sale housing units.
- B. Loans shall carry up to a 3% simple interest per annum depending on project underwriting. The loan will be a "residual receipts loan", payable in fifty-five (55) years (for rental housing units), or forty-five (45) years for homeownership units, or other term of years as may be required by senior affordable housing financing to the City's loan. The City shall record documentation on any real property assisted under this Program as evidence of the loan payment obligation and affordability restrictions, and such documentation will remain in effect until the loan has been paid in full and the affordability period has expired.
- C. The City Manager or designee is also authorized to approve, sign and record any document to subordinate the City's recorded document evidencing the deferred payment obligation if requested to do so by a lending institution providing funding for the construction of eligible affordable housing units.
- D. All affordable housing units for which under this Program must be subject to recorded affordability agreements and covenants to ensure the long-term affordability of the affordable housing unit as presented in this Program's application. The affordability agreements and covenants will, without limitation, prescribe requirements such as occupancy, resale, notices to the City of changed circumstances, City's right of first refusal, options to purchase, equity share, and related terms to ensure long term Affordability of all units.
- E. Additional underwriting requirements are found in Section VII of these guidelines.

### **V. INCOME TARGETING REQUIREMENTS:**

- A. A minimum of 30 percent of HTF Program funds (and CA HTF Matching Funds) requested, after deducting the City's administrative expenses, shall be expended on assistance to Extremely Low-Income Households, with household income of no more than 30 percent of the Area Median Income (AMI).
- B. The remaining HTF Program Funds (and CA HTF Matching Funds) requested shall be expended on assistance to Lower-Income Households, with household income of no more than 80 percent of AMI.

## **VI. PROGRAM CRITERIA AND SELECTION PROCESS**

- A. City staff will prepare a Notice of Funding Availability, either jointly or separately for Clovis HTF funds, public properties, or other funds that may be deposited and utilized within the HTF Program.
- B. The following criteria, without limitation and in no particular order, shall be considered priority projects in determining Program funding allocation:
  - 1. Projects that provide new development for senior housing, new multi-family housing units and/or new single family housing units.
  - 2. Projects that are compliant with the Housing Needs Assessment identified in the City's Consolidated and Annual Action Plan for Community Development Block Grant Funds.
  - 3. Projects that can provide evidence of site control.
  - 4. Projects that have initiated/completed Site Plan Review or applicable land use entitlements.
- C. Second priority will be given to rehabilitation of existing housing units.
- D. Proposals will be reviewed for eligibility by City staff and reviewed internally for funding recommendation by the City Manager or his designee to City Council.
- E. The selected proposal(s), and a list of back-up, or additional projects will be taken to City Council for their review and approval prior to submittal to the State of California Local Housing Trust Fund Program for matching funds, as is required.
- F. The list of projects, and selected projects, will be published on the City's website and other media.

## **VII. UNDERWRITING REQUIREMENTS**

- A. The Clovis Housing Trust Fund Program, and any selected projects/owners/applicants, will be required to follow State of California Local Housing Trust Fund Program Regulations.
- B. Debt Coverage Ratio - "Debt Service Coverage Ratio" means the ratio of (1) Operating Income less the sum of Operating Expenses and required reserves to (2) debt service payments, excluding voluntary prepayments and non-mandatory debt service. In calculating Debt Service Coverage Ratio, the City may include all Operating Income, and may exclude Operating Income that cannot be reasonably underwritten by lenders making amortized loans or that is approved by the City to be deposited into a reserve account to defray projected operating deficits.
  - 1. The first year Debt Service Coverage Ratio shall not be:
    - a. less than 1.10:1 or

- b. greater than 1.20:1, except where a higher first-year ratio is necessary to:
  - project first-year cash flow after debt service and required reserve deposits equal to or less than 12 percent of operating expenses;
  - meet the requirements of subsection (i);
  - meet CalHFA's standard underwriting requirements or those of a direct federal lending program; or
  - project a positive cash flow over 20 years, using the assumptions specified in subsection (i).

In applying the requirements of subsections (e)(1) and (e)(2), the annual MHP Program loan payment of 0.42% will be considered debt service.

The City may modify the application of these requirements on a case-by-case basis for Projects receiving operating or rental subsidies structured to allow for breakeven operation, or for operation at a level of cash flow that differs from that resulting from application of these requirements in order to meet the cash flow obligations in this subsection.

- C. Operating Expenses – "Operating Expenses" means the amount approved by the City that is necessary to pay for the recurring expenses of the Project, such as utilities, maintenance, management, taxes, licenses, and Supportive Services Costs, but not including debt service or required reserve account deposits.
  - 1. Total Operating Expenses (not including property taxes or the approved costs of on-site service coordination) shall not be less than those specifically listed in California Code of Regulations, Title 4, Section 10327 as minimum Operating Expenses (without the reduction allowed by those regulations for bond-financed projects). The City may project higher Operating Expenses where warranted by the experience of comparable properties and particular building characteristics, such as the nature of the tenant population or the level of rehabilitation. Prior to loan closing, the City may approve total Operating Expenses that are less than those specified in Section 10327, supra, only if the Project has an extraordinary design feature, such as its own electrical generation system, which results in a quantifiable operating cost savings as documented by a qualified third party.
  - 2. All Operating Expenses, including property management fees, shall be within the normal market range, as periodically determined by the City in surveys or based on costs observed in its portfolio.
- D. Replacement Reserve - The owner/applicant shall establish a replacement reserve to repair or replace failed or damaged capital items and to cover extraordinary maintenance expenses, as approved by the City. Extraordinary maintenance expenses are expenses for infrequent major repairs and replacements of building components too costly to be absorbed by the Project's

annual operating budget. In no event shall this reserve be used to fund limited partner exit costs.

1. Withdrawals from the replacement reserve shall require prior written approval of the City. Should the City fail to take action on a request for an eligible withdrawal from the replacement reserve within 30 days of documented receipt of the request, that request shall be deemed approved.
2. The replacement reserve shall be funded from Operating Income, development sources or a combination of Operating Income and development sources.
  - a. For new construction or conversion Projects, the initial amount of annual deposits to the replacement reserve account shall be equal to at least the lesser of 0.6% of estimated construction costs associated with structures in the Project, excluding construction contingency and general contractor profit, overhead and general requirements, or \$500 per unit. However, the City may approve a different amount based on the results of a third-party reserve analysis, which it may require, or other reliable indicators of the need for replacement reserve funds over the initial 20 years of operation, or, in the case of transactions involving restructuring of existing loans, 20 years of operations after the restructuring.
  - b. For rehabilitation Projects, the initial amount of annual deposits to the replacement reserve account shall be determined by the City based on the results of a third-party physical needs assessment or other reliable indicators of the need for replacement reserve funds over the initial 20 years of operation. In its initial underwriting, in the absence of an approved physical needs assessment or other reliable indicators of the need for replacement reserve funds, the City may assume that the initial amount of annual deposits shall be \$500 per unit. [CONSIDER DELETING IF NOT DOING REHAB]
3. The City may periodically adjust the amount of required deposits to the replacement reserve for a particular Project based on the results of reserve analysis or other reliable indicators of the need for replacement reserve funds over time.
4. The City may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the replacement reserve, where the City determines that such arrangement would not jeopardize the fiscal integrity of the Project and the minimum reserve requirements would be maintained. For Projects subject to direct federal loan or grant programs, including Native American Housing Assistance and Self Determination Act programs, or receiving a permanent loan from CalHFA or California HCD, the City may also defer to the replacement reserve requirements of these agencies during the time such projects are regulated by a federal agency or CalHFA.

5. If the City requires a reserve analysis because the City determines the reserve is inadequate due to annual replacement costs exceeding or being reasonably likely to exceed the amounts deposited to the reserve, or due to a request by the City to adjust the required reserve amount, the analysis must result in a due diligence report that examines the current physical conditions at property(ies), specifies repairs or replacements needed immediately, and budgets for the long-term capital repair and replacement needs during the life of an asset, such as the results of using the Capital Needs Assessment eTool, developed by the U.S. Department of Housing and Urban Development.
- E. Operating Reserve – The owner/applicant shall establish an operating reserve for the purpose of defraying operating shortfalls resulting from City-approved Operating Expenses exceeding Operating Income beyond the rent-up period.
1. Withdrawals from the operating reserve shall require prior written approval of the City. Should the City fail to take action on a request for an eligible withdrawal from the operating reserve within 30 days from documented receipt of the request, that request shall be deemed approved.
  2. The initial deposit to the operating reserve shall be funded from development funding sources in an amount determined by the City, which shall be not less than the total of the following: 4 months of projected Operating Expenses (excluding the cost of on-site Supportive Services coordination), 4 months of required replacement reserve deposits, and 4 months of non-contingent debt service. For projects with tax credits, the requirement shall be 3 months of these items. In setting the initial funding requirement, the City shall consider factors including, but not limited to the projected level of Project cash flow, the adequacy of the operating budget, Project location, local market characteristics, the number of sites, and Project design.
  3. Owner/applicant shall fully replace any withdrawals from the Operating Reserve, up to the minimum initial deposit amount specified in subsection (b) above, as may be modified in accordance with subsection (d) or (e) below, using available cash flow prior to use of any cash flow to pay deferred Developer Fee, partnership management or similar fees, or Distributions.
  4. In the absence of some extraordinary occurrences, such as litigation affecting the project or construction defects, and upon occurrence of both of the following events, the City shall reduce the required minimum balance: (i) operation at a debt service coverage ratio of 1.15 or greater for 5 years; and (ii) operation at an Operating Expense coverage ratio of 1.08, where Operating Expense ratio is defined to equal effective gross income, less required replacement reserve deposits and non-contingent debt service, divided by total Operating Expenses, not including the approved cost of Supportive Services coordination.

5. The City may agree with other financing sources to allocate authority regarding amounts deposited into or withdrawn from the Operating Reserve, where the City determines that such arrangement would not jeopardize the fiscal integrity of the Project and the minimum reserve requirements would be maintained. For Projects subject to direct federal loan or grant programs, including the Native American Housing Assistance and Self Determination Act programs, or receiving a permanent loan from CalHFA, CA HCD, the City may also defer to the operating reserve requirements of these agencies during the time such projects are regulated by a federal agency or CalHFA, and not require deposits in the amounts specified in subsection (b).
6. Where all Project development funding sources are legally precluded from using their funds to capitalize the operating reserve as required by subsection (b), the City may fund this account out of Operating Income, provided that cash flow is sufficient to reasonably ensure that the required balance can be accumulated within six years of initial occupancy.

F. Use of Operating Cash Flow

1. Operating income remaining after payment of approved current and prior year operating expenses, reserve deposits and mandatory debt service shall be applied in the following priority order:

**First**, towards payment of any:

- a. Approved deferred Developer Fee, pursuant to Section 8312 of the CA UMR;
- b. Asset management, partnership management and similar fees, including fees paid to investors, in an amount not to exceed the sum of:
  - An amount for the current year, equal to \$30,000 for 2016 and increased at the rate of 3.5% for each subsequent year, plus
  - Unpaid asset management, partnership management, and similar fees accrued for a period not to exceed three project fiscal years following the year during which they are earned, up to the difference between the limit for the year and the amount paid for that year; and
- c. Supportive Services Costs that these regulations would allow to be paid as operating costs, but that other funding sources do not.

**Second**, 50 percent to the Owner/applicant as Distributions and 50 percent to the City as payments on the Program loan.

- a. If the terms of other public agencies' financing also require payments from remaining cash flow, the City may agree to share what would otherwise be its 50 percent share of available cash flow with the

public agencies in amounts proportional to the agencies' respective assistance amounts.

- b. To be consistent with the terms of other public agency loans or leases, the City may agree to set the percentage payable to the Owner/applicant at an amount less than 50 percent.
  - c. For projects with income from project-based Section 8 or similar project-based rental assistance that is not underwritten by other Project lenders, the City may reduce the Owner/applicant's share to an amount equivalent to the amount they would receive if one of the other lender's loan amount was based on an income stream that included the income from the rental assistance.
2. Owner/applicant may not accumulate Distributions from year to year. Owner/applicant may deposit all or a portion of permitted Distributions into a Project account for distribution in subsequent years. These future Distributions shall not reduce the otherwise permitted Distribution in those subsequent years.
  3. The limits on payments for Developer Fee and for asset management, partnership management, and similar fees shall not apply to payments of those fees made from Distributions.
  4. Payment of Distributions, deferred Developer Fee, asset management fees, partnership management fees and similar fees shall be permitted only after the owner/applicant submits a complete annual report and operating budget, and the City determines that the report and budget demonstrate compliance with all Program requirements for the applicable year. Circumstances under which no Distributions, deferred Developer Fee, asset management fees, or partnership management fees, and similar fees shall be paid include:
    - a. when written notice of default has been issued by any entity with an equitable or beneficial interest in the Project;
    - b. when the City determines that the owner/applicant has failed to comply with the City's written notice of any reasonable requirement for proper maintenance or operation of the Rental Housing Development or use of Project income;
    - c. if all currently required debt service, including mandatory payments on the Program loan, and Operating Expenses have not been paid;
    - d. if the replacement reserve account, operating reserve account, or any other reserve accounts are not fully funded pursuant to Sections 8308 and 8309 and the Regulatory Agreement.
  5. Per State Uniform Multi-Family Regulations approved 2017, the following limits shall apply to total Supportive Services Costs paid as Operating Expenses. These limits shall be increased each year after 2017 at the rate of 2.5 percent per year:



- a. \$4,080 per unit per year for supportive housing restricted to individuals or families experiencing chronic homelessness, as defined consistent with CA Health and Safety Code Section 50675.14;
  - b. \$3,060 per unit per year
    - i. for supportive housing that is not restricted to individuals or families experiencing chronic homelessness as defined pursuant to CA Health and Safety Code Section 50675.14; and
    - ii. for units restricted to occupancy by Special Needs Population;
  - c. \$1,051 per unit per year for other units where the owner/applicant, their affiliate, or a service provider under contract to provide Supportive Services at the Project has both:
    - i. qualified staff devoted exclusively to oversight and quality control of resident services in affordable housing, including the Project; and
    - ii. a system to track and report on tenant outcomes, such as changes in employment status and income;
  - d. \$250 per unit per year for other units, where the owner/applicant, their affiliate, or a service provider under contract does not satisfy the requirements set forth in subsection (e)(3).
6. The following limits shall apply to Supportive Services Costs paid as Operating Expenses:
- a. The cost of staff supervision shall not exceed 10% of the cost of on-site staff salaries.
  - b. Administrative overhead expenses, including accounting and human relations, shall not exceed 15% of the total Supportive Services Costs paid as Operating Expenses.
7. Owner/applicants paying Supportive Services Costs as Operating Expenses shall maintain onsite and available for City inspection records of group activities (including calendars and sign-in sheets) and individualized services and referrals. The City may also require annual reporting on these and related matters.
8. For supportive housing, as defined pursuant to CA Health and Safety Code Section 50675.14, and upon approval by the City, owner/applicants may establish a reserve to cover unexpected shortfalls in revenues to pay for resident services coordination and case management costs. This reserve may be funded through project cash flow available after funding Operating Expenses and other required reserves, or through development sources. The maximum balance shall not exceed three times the per-unit, per-year limits specified in subsection (e).

- G. Vacancy Rates – Residential vacancy rates shall be assumed to be 5%, unless a different figure is required by another funding source (including TCAC) or supported by compelling market evidence.
- H. Construction Contingency if utilizing LHTF is used for Construction Financing - Where the City, and or CA LHTF is providing construction-period financing, the minimum budgeted construction contingency shall be 5 percent of construction costs for new construction projects and 10 percent of construction costs for rehabilitation and conversion projects.
- I. Subordination and Other Senior/Junior Loans
  - 1. Subordination: The City may execute and cause to be recorded a subordination agreement subordinating the City's lien so long as the subordination does not increase the City's risk beyond that contemplated in the Program loan or grant commitment, as may be amended from time to time, and so long as the subordination would further the interest of the Program. However, and except for Projects assisted by the U.S. Department of Housing and Urban Development under the Section 811 or Section 202 programs, the City shall not enter into a subordination agreement or other agreement that contains any of the following:
    - a. Any limitation of, or condition on, the City's exercise of its remedies including, but not limited to issuing a notice of default based on a breach under the City's loan documents, including a default based solely on a breach of the senior lienholder's documents.
    - b. An agreement that the senior lienholder's acceptance of a deed in lieu of foreclosure would result in the senior lienholder taking title to the Rental Housing Development free and clear of the City's lien(s).
    - c. An agreement permitting any modification or supplement of the senior lienholder's lien without the prior written consent of the City except an agreement that permits a senior lienholder to make advances to: (i) cure a default under a lien with a higher priority than the City's lien; (ii) pay delinquent taxes on the security property; (iii) pay delinquent hazard or liability insurance premiums for the security property; or (iv) to protect the health and safety of the tenants.
    - d. An agreement that would require the City to undertake additional obligations to any party.
  - 2. The City's lien(s) shall not be subordinated to the liens of a lender affiliated with an entity that has an ownership interest in the Project unless a covenant, regulatory agreement, or similar instrument is recorded senior to the lender's documents.
- J. Leasehold Security Requirements
  - 1. In any Project where the owner/applicant proposes to control the Project land through a long-term ground lease, either:

- a. the Regulatory Agreement and other Program documents shall be recorded against both the owner/applicant's interest in the Project and the fee interest in the land, and the lease shall have a term remaining at the time of recordation at least equal to the term of the Program loan or grant; or
- b. if the Regulatory agreement and other Program documents are not recorded against the Project's fee interest, the ground lease shall be subject to the City's approval, must not be subject to any other mortgages, regulatory agreements, use restrictions, or equivalent instruments on the fee interest, and shall contain, or be amended to contain, provisions which:
  - i. establish a remaining term of at least ninety (90) years from the date the City documents are recorded, provided that the City may accept a lesser term, not less than 65 years, when the lessor is a public agency;
  - ii. ensure the validity of the lien of the Program loan and/or grant documents on the lease;
  - iii. ensure that the lease permits the Project to satisfy all Program requirements and permit the City to enforce the provisions of the Program loan and/or grant without restriction;
  - iv. expressly consent to the lessee's assignment of the lease to the City without further consent of the lessor, and permit the City, after acquisition of the leasehold property, to transfer or assign the lease to a third party without consent of the lessor;
  - v. provide that the lessor does not have the right to terminate the lease or accelerate the rent upon lessee's breach without first giving the lessee and the City reasonable notice and opportunity to cure within a reasonable period;
  - vi. provide that no termination, modification or amendment to any terms of the lease shall be effective without the written consent of the City, and any attempt to take such actions would be void without the City's consent;
  - vii. require that, in the event of destruction of any improvements on the land, neither the lessor nor the lessee shall terminate the lease if and so long as the lessee or City pursues reconstruction of the improvements with reasonable diligence;
  - viii. provide that the City shall not have any liability for the performance of any of the obligations of lessee under the lease until the City has acquired the leasehold interest, and then only in accordance with the terms of the lease and only with respect to obligations that accrue during the City's ownership of the leasehold interest;

- ix. provide that neither the lessor nor the lessee, in the event of bankruptcy by either, will take the benefit of any provisions in the United States Bankruptcy Code that would cause the termination of the lease or otherwise render it unenforceable in accordance with its terms;
  - x. provide that the leasehold interest will not merge into the fee in the event that the lessee acquires the reversionary interest in the Project; and
  - xi. provide that acquisition of the leasehold property by the City will not result in a termination of the leasehold; and upon such event, obligate the lessor to enter into a new lease having a term at least as long as the term remaining on the lease prior to acquisition by the City and on substantially the same terms and conditions.
2. If any other regulatory agreement, use restriction, or equivalent instrument is recorded against the fee, the City's Regulatory Agreement or covenant must also be recorded against the fee. For the purposes of this subsection, the phrase "regulatory agreement, use restriction, or equivalent instrument" shall not be interpreted to include any instrument that does not relate in any way to affordability, or any affordability restriction that is not required as a condition of public financing.
3. Where the lessee and lessor are related or affiliated parties, the Program loan and/or grant documents shall be recorded against both the owner/applicant's interest in the Project and the fee interest in the land.
4. To the extent consistent with the statutes and regulations governing the Program, the City may modify or waive the requirements of this section where the lessor is a public agency that demonstrates that it is prohibited by law from meeting the requirements, and the City determines that there remains adequate security for the Program loan.

## **VIII. PROGRAM ADMINISTRATION**

- A. The Program will be administered by the City's Affordable Housing Programs office under the direction of the City Manager or designee.
- B. The Program shall be marketed immediately following City Council approval of these guidelines.
- C. City staff will publish a Notice of Funding Availability (NOFA) for the utilization of "Housing Trust Fund Program" funds and/or public property(ies). The NOFA will be published on City social media, Planet Bids, by providing to interested Housing Developers, and other media. Interested parties will be required to submit a City developed application that provides sufficient information for project qualification.

- D. The NOFA will be available only during the required period necessary to facilitate a Matching Funds application to the State of California Local Housing Trust Fund Program.
- E. Selected proposals will be reviewed for underwriting standards and Program qualifications. All funded units will be required to have affordability agreements and restrictions (covenants) recorded against the property securing both the on-going affordability of the units and repayment of the loan.
- F. City staff will monitor compliance with all affordability covenants pursuant to the City's applicable Affordable Housing Unit Compliance Monitoring Policy.