

MULTIFAMILY PRESERVATION TRANSACTION APPLICATION INSTRUCTIONS & CHECKLIST

Overview

The purpose of the Multifamily Preservation Transaction Application (“Application”) is to allow the City of San José Housing Department (“City”) to better assess and process requests from owners of affordable housing developments with existing City financing for approvals and consents related to those developments. These approvals and consents can be related to things like Limited Partnership exits, property ownership transfers, loan restructurings, refinancings, and resyndications with tax exempt bond issuance.

The Application will allow the City to consistently evaluate proposed requests for discretionary City approvals on projects with existing City financing, City restrictions or City regulatory agreements and help to efficiently process those requests. The Application will also help to define the process and due diligence requirements for the developer’s request. Finally, it will allow the Department to add the transaction to its queue after the Application is fully completed and staff has determined that the request is consistent with the City’s policies and guidelines.

Applicability

All owners and developers requesting City discretionary approvals regarding multifamily projects with existing City financing and/or restrictions are required to submit the Application.

Objectives

The City’s objectives will be to support the adequate capitalization and preservation of existing affordable housing developments within the City; strengthen the capacity of the City’s affordable housing providers to create, preserve, and maintain affordable housing in the City; and preserve the City’s loan security and affordable housing assets. The City will consider the following factors when processing, negotiating, and closing multifamily transactions:

- Promote Safe & Decent Housing for Residents – The new transaction must ensure all residents affected by the transaction have access to decent, safe, and sanitary housing that is in good repair.

- Rehabilitate the City’s Affordable Housing Stock – The City seeks to ensure the stewardship of affordable housing projects by providing for the appropriate levels of rehabilitation and correction of deferred maintenance items. The level of rehab should be appropriate to the type of transaction being considered. For example, a resyndication should provide at least another 15 years of physical and economic viability.
- Preserve the Supply of Existing Affordable Housing – The City is keenly interested in preserving the supply of existing affordable housing through the extension of the time period of affordability covenants, and ensuring the affordable project remains viable. The length of extension will be determined by the type of transaction being considered.
- Prudent Lending Practices – The City is responsible for following prudent lending practices, which are generally-accepted underwriting and lending practices for public loan programs, based on sound judgment to protect City lender interests. Prudent lending practices provide for compliance with local laws and maintenance of a security interest in loan collateral. After achieving these public objectives, the City will seek repayment of outstanding public debt when feasible, including outstanding principal and accrued interest. Any loan repayments will be reinvested into new affordable housing.

Application Submittal and Review Process

The City encourages developers to submit the fully completed Application as early as possible, so that the transaction may be prioritized. For example, if you are applying to TCAC or CDLAC with assumptions about City Loan terms or Bond Issuance, we strongly recommend you submit this application to the City at minimum **[6 months]** before your proposed transaction.

The application submitted to the City needs to be well in advance of your TCAC and CDLAC application deadlines, or senior loan maturity, to ensure the City is on board with your proposed expectations. It is worth noting that some transactions take very little time to complete, while others (e.g. a resyndication for which the City is also issuing Multifamily Revenue Bonds) may take months to complete.

Below is the Multifamily Preservation Process estimated timeline. Failure to provide to the City requested items, or a determination that the proposal is not consistent with City guidelines and policies may result in extend timelines.

PRESERVATION APPLICATION REVIEW PROCESS	
ESTIMATED TIME	
0	Applicant submits complete application
1 week	The City provides the applicant with confirmation the application has been received
4 weeks	The City reviews and responds to the applicant, if the application is complete or makes a requests for additional due diligence items or other information.
1 week	The City starts Kick-Off calls to discuss timelines and responsibilities.
4 weeks	The City prepares the Term Sheet. At this time, the City will convey whether the applicant requested target deadline is feasible and provide a feasible target date.
10 Weeks	<-- Total number of Weeks before a 'Transaction Closing' can take place.

Transaction Fees

Depending on the type of transaction, certain transaction-related fees may apply. For more information, please visit <http://www.sanjoseca.gov/index.aspx?nid=5562>. In addition, developers should be aware that the City requires AR monitoring and other annual fees for all newly negotiated transactions.

If you have any questions about the Multifamily Preservation Transaction Application, please contact Orlando Reyes at 408-975-4472 or email housingtransactions@sanjoseca.gov.

Consideration

All multifamily transactions require consideration when developers seek City discretionary approvals tied to existing projects with City financing. The consideration will be sized relative to the developer’s requested transaction. The following are examples of negotiated considerations that the City has pursued and received when processing multifamily transactions for existing affordable housing developments with City financing:

- Extension of Affordability Restrictions (“ARs”)
- Additional AR operating and reporting covenants and City Rights
- Addition of AR Monitoring Fees
- Addition of Loan Servicing Fees
- Changes in AR Unit Mix to increase affordability

- Designation of Transition in Place Homeless Units (e.g. rapid rehousing, or similar)
- Payments of Existing Debt

Specific Consideration

(1) Subordination

It is the City's intent that its Affordability Restrictions not be subordinated to senior debt and when the City does not subordinate it may agree to amend its restriction to acknowledge the senior debt and provide for cure rights.

Please review the City's Subordination Agreement Requirements Policy and City form of Subordination Agreement.

(2) Bond Transactions

If transaction includes the use of tax-exempt bonds, the City will be the Issuer. For the City to engage bond counsel and establish a timeline towards the inducement and TEFRA hearing, the applicant must answer the Bond specific questions attached with the Multifamily Preservation Transaction Application.

Please note, we **do not accept** a related parties' transaction, when a party (e.g., a bank) has controlling interest in the bond purchaser/lender and in the investor partner of the Limited Partnership that borrows the bond proceeds.

MULTIFAMILY PRESERVATION TRANSACTION APPLICATION - CHECKLIST

Submission

Please email your Multifamily Preservation Transaction Application & documentation described below to housingtransactions@sanjoseca.gov

Required Documents: All items in bold are mandatory.

1. **A Proforma** with the following sections at minimum included:
 - **Sources & Uses of Funds** (separate Construction & Permanent sources and uses)
 - a. if applicable provide both, a Buyer & Seller sources and uses.
 - b. tax credit eligible: construction/rehab and acquisition costs
 - **Unit Mix and Rental Income**
 - **Base Year Income & Operating Expense Statement**, identify per-unit per-year for each itemized entry. Include any sources of subsidy that will offset, for example a portion of the resident services expenses.
 - **Lease-up/Placed in Service schedule**
 - **55 Year Cash flow**
 - Capital Account Analysis and Tax Liability
 - Calculation of Net Syndication Proceeds
 - TCAC Basis Limit Calculation
 - Sources & Uses for the proposed acquisition/buyout
 - Monthly Draw Schedule
2. **An Acknowledgement Statement**, that your project, and any related affiliate entities, are current with financial reporting and payments due to the City of San José Housing Department. If you are not in compliance, please identify the project(s) and details when you expect to comply.
3. **Preliminary Title Report with active Hyperlinks**
4. **Please submit your 1st year Proforma** for this existing project, and **compare it to the most current audited actual financials**.
 - a. Include a narrative that explains any significant deviations, of **income** (subsidy and non-subsidy), **expenses** (operating, debt service), and **residual receipt projections** to the City. Significant deviations should be itemized (e.g. operating expenses) and quantified on a per unit, per year basis.
 - b. If your new transaction includes a proposed Proforma, please identify any operating assumptions (e.g. income, expenses, residual receipt) that deviate from current audited financials.

If Applicable

- CDLAC and TCAC application status, and provide a copy of the package you plan to submit to CDLAC and TCAC.
- A PDF of your Architectural Plan Set, and Planning/Building permit #. Please format your PDF to print in 10x12.