

# **City of Bellingham**

## **Housing Development**

### **Guideline and Procedure Handbook**



**Kelli Linville, Mayor**

**Rick Sepler, Planning and Community Development Director**  
**Samya Lutz, Housing & Services Program Manager**

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## INTRODUCTION

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The Bellingham Housing Levy authorizes \$40 million over a 10-year period to provide, produce, and/or preserve affordable housing in Bellingham and to assist low-income tenants and those experiencing homelessness in Bellingham. The Housing Levy funds four programs:

1. Production and Preservation of Homes
2. Rental Assistance and Support Services
3. Low-income Homebuyer Assistance
4. Acquisition & Opportunity Loans

The 2018 Housing Levy was approved by Bellingham voters in November 2018 and includes property tax levies authorized for ten years, from 2019 through 2028. The Planning and Community Development Department, Housing and Services program, administers the 2018 Bellingham Housing Levy programs.

The Levy Administrative and Financial Plan (“Levy A & F Plan”) was approved by City Council (Resolution No. 2018-34) after Bellingham voters approved the Levy. These guidelines implement the Levy A & F Plan and provide guidance to applicants and staff in implementing the requirements of the Housing Levy.

This Handbook also governs housing projects funded through federal HOME Investment Partnership Program and Community Development Block Grant funds that are awarded through the City of Bellingham.

## DEFINITIONS

- A. **"Affordable housing"** means residential housing for rental or private individual ownership which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities, other than telephone, of no more than 30 percent of the household's income.
- B. **"Affordable rent"** means annual rent and tenant-paid utilities on an affordable unit cannot exceed 30 percent of the imputed limit under which the household would qualify. Rents are based upon the number of bedrooms in the unit and an assumption of 1.5 persons per bedroom, regardless of the number of persons renting the unit. Rents are based on the income level committed to the affordable unit and are not calculated on the actual income of the household. The City updates rent schedules annually based on changes to the Area Median Income (AMI) as determined by HUD.

Example: *An affordable unit is designed to serve households at or below 50% AMI. A prospective tenant's anticipated income is 45% AMI. The maximum rent charged for the tenant's unit is based on 50% AMI, the targeted income level. This ensures the project owner that rental income will be stable and not change with the income of each new tenant.*

While an Owner may charge rents lower than the maximum allowed, actual rents, including utility allowances, can never exceed the maximum allowed Affordable Rent.

- C. **"Commitment"** means the City has executed a legally binding written agreement to use funds allocated by the City to produce or preserve affordable housing, or provide supportive housing services. Projects which receive HOME Investment Partnership funds from the City must adhere to the definition of commitment in 24 CFR § 92.2. Also, see Section 405, Fund Reservation.
- D. **"Extremely low-income"** means income not exceeding 30% of median income.
- E. **"Extremely low-income household"** means a household with income less than or equal to 30 percent of median income.
- F. **"Homebuyer"** is defined as any individual, or individual and his or her spouse/partner who currently do not own a home within the City of Bellingham prior to the household's purchase of the home. The term homebuyer also includes an individual who is a displaced homemaker, distressed household, or single parent, as defined in 24 CFR Part 92 HOME Investment Partnership Program, Section 92.2 Definitions, as follows:
  - Displaced homemaker means an individual who:**
    1. Is an adult;
    2. Has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and
    3. Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.
  - Distressed household means:**
    1. Is an adult;
    2. Currently owns a home within the City of Bellingham;
    3. Currently is in default with their lender; and
    4. Is eligible for loan modification and/or refinance with additional funds to make the home affordable.
  - Single parent means an individual who:**
    1. Is unmarried or legally separated from a spouse; and
    2. Has one or more minor children of whom the individual has custody or joint custody, or is pregnant.
- G. **"Homeownership"** means ownership in fee simple title in a 1- 4-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD. The land may be owned in fee simple or the homeowner may have a 99-year ground lease. For manufactured housing, the ground lease must be for a period at least equal to the period

of affordability. Right to possession under a contract for deed, installment contract, or a land contract (pursuant to which the deed is not given until the final payment is made) is not an equivalent form of ownership. Homeownership in a cooperative or mutual housing project constitutes homeownership if allowed under Washington State law. For homeownership using HOME Investment Partnership funds, see 24 CFR § 92.2.

- H. **"Household"** means a single person, family or unrelated persons living together.
- I. **"High frequency transit service area"** means an area within one-quarter mile of bus, with service characterized by headways of 30 minute or less, during at least 6 days each week. The Planning and Community Development Department will work with the Whatcom Transportation Authority (WTA) to map high frequency transit service areas, and may adjust the definition and map when appropriate to reflect changes in transit service or add locations where transit service is sufficient to serve potential housing residents.
- J. **"Income"** means household income computed in conformity with requirements of the federal HOME program, unless the PCD Director shall permit another method of computation for a particular project or class of projects. To the extent permitted by applicable State law, income determinations may take into account such exclusions, adjustments and rules of computation as may be prescribed or used under federal housing laws, regulations or policies for purposes of establishing income limits, or as may be established in City housing and community development plan documents consistent with federal laws, regulations or policies.
- K. **"Low-income"** means income not exceeding 80% of median income.
- L. **"Low-income household"** means a household with income less than or equal to eighty percent (80%) of median income. In relation to HUD-funded projects and services, an individual does not qualify as a low-income household if the individual is a student who is not eligible to receive Section 8 assistance under 24 CFR 5.612.
- M. **"Low-income housing"** means housing that will serve "low-income households." Low-income housing does not include facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities, halfway housing, housing primarily for students, or dormitories (including farmworker dormitories).
- N. **"Median income"** means annual median family income for the Bellingham, WA HUD Metro FMR Area, as published from time to time by the U.S. Department of Housing and Urban Development (HUD), with adjustments according to household size in a manner determined by the Director, which adjustments shall be based upon a method used by HUD to adjust income limits in subsidized housing, and which adjustments for purposes of determining affordability of rents or sale prices shall be based on the average size of household considered to correspond to the size of the housing unit (one (1) person for studio units and one and a half (1.5) persons per bedroom for other units).
- O. **"Program income"** means funds received by the City as payments on or with respect to a loan, or recovery from loan collateral, and may include interest and share of appreciation, as required under the terms of the loan.

- P. **"Rent"** means all amounts charged for the use or occupancy of the project (whether or not denominated as rent or constituting rent under state law), plus a utility allowance for heat, gas, electricity, water, sewer, and refuse collection (to the extent such items are not paid for tenants by the owner).
- Q. **"Site acquisition"** includes the acquisition of interests in land or in improvements to land, or both, and may include repayment of fund sources initially used for acquisition.
- R. **"Very low-income"** means income not exceeding 50% of median income.
- S. **"Very low-income household"** means a household with income less than or equal to 50 percent of median income.

The Planning and Community Development Director may adopt further refinements or interpretations of the above definitions, consistent with the intent of Ordinance 2012-06-033 and Consolidated Plan Housing Policies.

## CHAPTER 1 - HOUSING LEVY REQUIREMENTS

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This Chapter identifies the Housing Levy requirements set forth in foundational documents, including the Housing Levy Administrative and Financial Plan approved by the Bellingham City Council (Resolution No. 2018-34).

### SECTION 101. HOUSING LEVY PRIORITIES AND PREFERENCES

Implementing the Housing Levy requires an ability to have effective priorities and goals, but also requires an understanding that there are preferences when it comes time for allocation of resources. Preferences should be based on the Priorities outlined below, together with the other administrative and leveraging preferences.

#### A. HOUSING LEVY PREFERENCES

The City would give preference for activities that are based on some or all of the criteria below.

1. **City Legacies and Strategic Commitments** -- projects or activities that implement one or more of the City Legacies and Strategic Commitments.
2. **Demonstrated Need and Gap** -- projects or activities that demonstrate there is a gap in services needed to address the priority needs in the Consolidated Plan.
3. **Collaboration** -- projects or activities showing high degree of volunteers or collaboration with partners.
4. **Mobility** -- projects or activities that are located with access to transit.
5. **Geographic** -- projects or activities that address the need for geographic housing equity throughout the City, including needs of neighborhoods with disproportionate burdens.
6. **Equity & Social Justice** -- projects or activities that address the disproportionate burden of minority racial and ethnic populations regarding income and housing in the City.
7. **Children and Poverty** -- projects or activities that address adverse childhood experiences, and projects or activities that work to end intergenerational poverty.
8. **Leveraging** -- projects or activities that leverage other funds.
9. **Probability of Success** -- projects or activities that demonstrate the ability, stability and resources needed to implement the project. This preference will not discourage new, innovative strategies from being proposed.
10. **Sustainability** -- Projects that implement city infill and sustainability objectives.

## B. HOUSING LEVY PRIORITIES

The City's Consolidated Plan sets priorities for the limited federal resources (Community Development Block Grant and HOME Investment Partnerships Act) available from HUD. The Housing Levy must be consistent with the City's comprehensive housing affordability strategy (Consolidated Plan) required under the Cranston-Gonzalez national affordable housing act. The goals and priorities of the Consolidated Plan are incorporated by reference, and set forth below for easy reference.

- 1) **INCREASE AFFORDABLE HOUSING SUPPLY**
- 2) **ADDRESS AND PREVENT HOMELESSNESS**
- 3) **PRESERVE EXISTING HOUSING**
- 4) **PROMOTE NEIGHBORHOOD EQUITY**
- 5) **COORDINATE EFFECTIVE DELIVERY OF SERVICES**

### SECTION 102. CONSISTENCY WITH LOCAL PLANS

Use of Housing Levy funds requires that the funding be used consistent with the City's Consolidated Plan (<https://www.cob.org/services/housing/Pages/consolidated-plan.aspx>). See any additional requirements in the Notice of Funding Availability (NOFA) that may require consistency with other local plans, such as the Plan to End Homelessness (<https://www.cob.org/services/housing/homeless/Pages/homelessness.aspx>).

### SECTION 103. ELIGIBLE HOUSEHOLDS/POPULATIONS

- A. General. Housing Levy funds are limited to paying for affordable housing and housing services for low (below 80% AMI) and very low-income (below 50% AMI) households. 2/3<sup>rd</sup>s of the Housing Levy funds are dedicated to very low-income households (below 50% AMI) as authorized by RCW 84.52.105.
- B. Rental Assistance and Housing Services. To be eligible to apply for Rental Assistance and Supportive Services Program funds, households must meet all the following requirements:
  - reside in Bellingham City limits
  - 50% of area median income or below
  - homeless or at risk of homelessness
  - inadequate financial resources to maintain stable housing
- C. Homebuyers. Homebuyers must have gross incomes at or below 80% of AMI but greater than 50% of AMI, adjusted for household size. The Planning and Community Development Director may waive the minimum requirement of 50% AMI if the homebuyer demonstrates adequate equity and financial reserves to address potential future income reductions and major housing maintenance requirements. Homebuyers must contribute no less than 25% of their income towards mortgage costs or 30% of their income to all housing costs, including taxes, insurance, utilities, fees, etc.

**SECTION 104. PERIOD OF AFFORDABILITY**

- A. Rental Housing Production projects require a minimum period of affordability of **fifty (50)** years from the date of project completion.
- B. Multifamily and shelter housing preservation projects must comply with HOME Investment Partnership affordability periods, which is calculated based on the amount of City investment into the housing units. See table below.

<b>Average \$ per-unit</b>	<b>Minimum Affordability Period</b>
< \$15,000/unit	5 years
\$15,000 - \$40,000/unit	10 years
> \$40,000/unit	15 years

- C. Owner-occupied housing projects require the owner to demonstrate qualification for assistance at the time of funding application.

**SECTION 105. AFFORDABILITY COVENANT**

Where continued affordability is required by the City, a covenant will be recorded against the property for that affordability period. This covenant shall continue in effect even if the loan is repaid or discharged before the period of affordability ends. The City may release the covenant, wholly or in part, in connection with a sale of the property if the City determines that under all the circumstances, including any proposed substitution of other units, the release will likely result in a net benefit to the City's efforts to achieve low-income housing goals, compared to maintaining the covenant.

**SECTION 106. ELIGIBLE PROJECT TYPES**

The Housing Levy programs include the following:

- A. Production and Preservation of Homes. This program funds the development and preservation of affordable rental housing, as well as the preservation or rehabilitation of owner-occupied housing.
- B. Rental Assistance and Supportive Services. This program serves vulnerable families and individuals who are experiencing homelessness or at imminent risk of homelessness.
- C. Homebuyer Program. This program assists low-income homebuyers with purchase of homes in the City of Bellingham.
- D. Acquisition and Opportunity and Bridge Loans. This program is intended as short-term funding to permit strategic acquisition of site for low-income housing development.

The City may fund and/or seek applications within the general parameter of the Housing Levy programs. See Housing Levy funding opportunities.

### **SECTION 107. ELIGIBLE AND INELIGIBLE ACTIVITIES AND COSTS, PRODUCTION AND PRESERVATION PROGRAM**

Production and Preservation Program funds shall be used to fund the production and preservation of rental housing, and the preservation/rehabilitation of owner-occupied housing. Funds may be used to finance entire developments, individual units, or residential portions of a development.

#### **A. Eligible costs**

Eligible costs include, but are not limited to:

- Appraisals
- Architectural/engineering/environmental/geotechnical fees
- Capitalized Operating Reserves
- Capitalized Replacement Reserves
- Closing costs
- Construction, including sales tax
- Contingency (budget only, must be supported by eligible costs)
- Developer and Public Funder fees
- Inspections & Surveys
- Insurance
- Interest
- Option costs
- Permits
- Reimbursement of authorized pre-development costs\*
- Professional Fees
- Environmental Assessment
- Financing fees
- Hazardous materials abatement
- Purchase price
- Relocation
- Title insurance
- Project Funding Sign

\*Nonprofit borrowers are encouraged to use Impact Capital or other cost-effective sources for pre-development funding. See Section 406 Contract Negotiations.

#### **B. Residential spaces**

Program funds may be used to fund housing units, residential spaces, and common areas to the extent they serve the low-income housing and no other uses. Examples include:

- Areas for cooking, eating, bathing
- Building Lobby
- Areas for resident use such as television or reading rooms
- Corridors, stairwells, bicycle storage, other storage areas
- Management and service office space that is accessory to the housing
- Spaces used for on-site social services

Examples of where program funds cannot be used include:

- Lawns or landscaping, except as needed to repair grounds following construction or rehabilitation
- Fireplaces and/or wood stoves
- Furniture
- Detached greenhouses
- Central vacuum systems
- Hot tubs or spas
- Portable appliances
- Housing located more than ½ mile from a public transportation route

### **C. Non-residential portions of mixed-income or mixed-use developments**

Program funds can be used for projects that combine affordable rental housing with market-rate units and/or commercial spaces. However, costs associated with market-rate units or commercial spaces are not eligible for Program funding.

Borrowers must demonstrate that Program funding is attributable to eligible residential spaces and that costs of other parts of the project are paid by funds eligible for that purpose. Where it is impractical to segregate costs between Program-funded units and other portions of a mixed-use project, the PCD Director or designee may permit such costs to be pro-rated between Program funding and other funding sources based on a reasonable formula.

In order to facilitate development of the eligible residential spaces, PCD may allow Program funds to be disbursed for the full amount of a shared cost item if:

1. Documentation is provided prior to expenditure of Program funds that assures sufficient funding from other sources will be provided prior to project completion equal to the full amount allocable to such space; and
2. The final cost certification confirms the allocation of appropriate non-Rental Housing Program funds for such spaces.

## **SECTION 108. ELIGIBLE AND INELIGIBLE ACTIVITIES AND COSTS, RENTAL ASSISTANCE AND SUPPORTIVE SERVICES PROGRAM**

Financial assistance is available for:

- Case management services or operational staff for security associated with homeless housing projects
- Rent payments
- Move in costs (background check fees, first and last month's rent)
- Security and/or utility deposits
- Limited rent or utility arrears needed to obtain or retain secure, stable housing
- Reasonable administrative costs to agencies that provide case management services and/or financial assistance

## SECTION 109. ELIGIBLE AND INELIGIBLE ACTIVITIES AND COSTS, HOMEBUYER PROGRAM

Levy funds may only be used for (1) subordinate mortgages to assist eligible homebuyers, (2) site acquisition and/or development costs for a home or homes to be sold to eligible buyers, or (3) loans or recoverable grants to nonprofit entities to assist eligible homebuyers purchase resale-restricted homes.

Eligible buyer households must purchase a home in Bellingham and use it as their principal residence. All types of for-sale units are eligible, including single-family residences, condominium units, limited equity cooperatives, co-housing, land trusts, and homes on leased land. Purchases of investment properties are not allowed under this program. Homes with an accessory dwelling unit are eligible, provided that the buyer will be an owner-occupant of the home. A lease-to-own contract or long-term lease may be considered a purchase.

Borrowers may purchase any type of residential property, whether currently owner- or renter-occupied or vacant. If tenants are displaced as a result of a sale to a buyer who will become an owner-occupant under this program, tenant relocation assistance is required if the tenant was low-income.<sup>1</sup> Relocation assistance is not an eligible use of Levy funds.

All homes assisted under this program must meet Housing Property Standards adopted by the City to ensure decent, safe and sanitary housing. Property Standards can also be set to ensure energy efficiency of the homes. Homebuyer assistance may be used in conjunction with other City funds, including Housing Preservation funds, to meet Housing Property and/or energy efficiency standards.

Levy funds may not be used for the following activities:

- Housing located outside the City of Bellingham
- New housing construction located more than ½ mile from a public transportation route

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<sup>1</sup> If federal funds are used, acquisition and relocation must follow federal requirements, which does not limit relocation assistance to only low-income tenants.

- Payment of relocation assistance
- Moving costs

#### SECTION 110. SUPPLEMENTAL FUNDING FOR PROJECTS PREVIOUSLY FUNDED BY THE CITY

The City may provide financing to meet the capital needs of existing City-funded projects that meet at least two of the following criteria:

- a) the property has a critical capital need or code violation that cannot be addressed through the property's cash flow, reserves or other available resources,
- b) no other funding is available within the time frame required for the project,
- c) a public benefit will be realized as a result of the additional City funds, and
- d) the Borrower will make a significant financial contribution.

All such financing is dependent upon the borrower's ability to meet the goals and requirements of the program and demonstrate a plan for capable management and fiscal operations of the property. Such funds may be provided as shorter-term loans or added to existing long-term City loans, as the City may determine based on the circumstances of the project.

In cases where the City has determined a project eligible for supplemental funding, original loan terms and conditions may be changed to the terms and conditions applicable at the time of refinancing.

#### SECTION 111. AUTHORITY TO SELECT PROJECTS, APPROVE EXPENDITURES

The Mayor, or other such person as may be designated by the Mayor, is authorized, for and on behalf of the City, to select projects for funding and to approve, make and modify loans, grants or other expenditures to carry out the Housing Levy Programs, provided that such authority is subject to the appropriation of sufficient funds and consistent with the Plan approved by City Council. The Mayor and his or her designees are further authorized, for and on behalf of the City, to execute and deliver such documents and instruments as he or she may determine to be necessary or appropriate to implement the financing of specific projects or to otherwise carry out the Housing Levy Programs.

#### SECTION 112. CITIZEN ADVISORY COMMITTEE

The Community Development Advisory Board ("CDAB"), established pursuant to BMC 2.46.010, shall advise the City Council, Mayor and the Director of Planning and Community Development regarding the Housing Levy Programs. CDAB shall also assist in monitoring the progress, performance and accomplishment of Housing Levy Programs, and report such findings to the Mayor and City Council, including any problems and recommendations on actions to be taken so

that the Housing Levy Programs are conducted in a timely and efficient manner for the benefit of low-income households.

#### SECTION 113. ADMINISTRATION

The Planning and Community Development Department shall administer programs funded with the additional Housing Levy taxes collected.

#### SECTION 114. PROJECT LOCATION

Housing Levy funds are limited to assisting projects and households within the City of Bellingham. All new construction and rental projects must be located no more than ½ mile from a public transportation route ([www.ridewta.com](http://www.ridewta.com)), and preference is given to those projects that are located in a high-frequency transit service area (30-minute headways).

#### SECTION 115. PROJECT FUNDING SIGN

All projects receiving funding from the Bellingham Housing Levy shall post a Project Funding Sign at the project construction site(s). Sign graphics shall be in accordance with the Funding Agreement approved by the Mayor and PCD Director, and shall be installed at the commencement of work on the site through project completion and occupancy.

#### SECTION 116. PUBLIC RECORDS ACT NOTICE

Materials and information submitted to the City are subject to public disclosure unless otherwise exempt from disclosure under the Washington Public Records Disclosure Act (RCW 42.17 et seq.). No assurances can be given that any materials provided can be protected from public review and copying.

## CHAPTER 2 - GENERAL HOUSING DEVELOPMENT GUIDELINES

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This chapter contains the guidelines for the award and management of Housing Development funds. These funds include federal (Community Development Block Grant and HOME Investment Partnership) and local (Housing Levy).

### SECTION 201. ELIGIBLE APPLICANTS

Through the City selection process, priority will be given to applicants that have demonstrated ability to develop, own, and/or manage affordable housing and/or provide housing services. Applicants that do not have previous experience in these areas will be expected to propose an appropriate relationship with an entity that does have this experience.

Eligible applicants for Housing Development funds include:

- A. Nonprofit agencies: Eligible nonprofits must have a charitable purpose. The City's preference is to provide funding to nonprofit borrowers that have established housing as a primary mission. Private nonprofit agencies will be required to submit articles of incorporation and an IRS letter as proof of nonprofit status.
- B. Any corporation, limited liability company, general partnership, joint venture, or limited partnership created and controlled by a nonprofit or public corporation in order to obtain tax credits or for another housing-related objective approved by the City.
- C. Public Development Authorities.
- D. Bellingham Housing Authority (BHA). Note: not all funding sources may be eligible in public housing units.
- E. Private for-profit firms: Eligible for-profits must have experience developing, owning, and managing multifamily rental housing. Private for-profit firms can include partnerships between one or more firms, such as a building contractor and a property manager. Private for-profit firms may also partner with nonprofit or public agencies as needed to provide sufficient capacity to develop, own and operate housing on a long-term basis.
- F. Homeowners. Low-income homeowners where projects are managed and overseen through a housing and/or weatherization program operated by the City of Bellingham, Opportunity Council or Habitat for Humanity, or other program as approved by the PCD Director.

### SECTION 202. DEBARMENT

Under certain circumstances, the applicant or other parties associated with the project may be barred from participating in the City's housing program. The contractor will be required to certify that neither the contractor nor its principals are debarred, suspended, proposed for

debarment, declared ineligible, or voluntarily excluded from participation in the contract by any federal, state or local agency.

### SECTION 203. CONFLICT OF INTEREST

No officers or employee of the City; no owner, developer, or sponsor of a project (or officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor or immediate family member or immediate family member of an officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor); and no other official of such locality or localities who exercises any functions or responsibilities with respect to the project during his or her tenure, shall have any personal or pecuniary gain or interest, direct or indirect, in any contract, subcontract, or the proceeds, for work to be performed in connection with the project assisted with City funds, including occupying an affordable housing unit during the required period of affordability. The owner, developer, or sponsor of a project shall incorporate, or cause to incorporate, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this provision.

The City reserves the right to waive these conflict of interest provisions in a manner consistent with State law and based on a case-by-case review in accordance with each element required in 24 Code of Federal Regulations 570.611 and/or 24 CFR, Part 92.356.

### SECTION 204. ORGANIZATIONAL CAPACITY AND AUTHORIZATION

Applicants will need to demonstrate, with a reasonable level of assurance, that the sponsoring organization is fiscally sound and has reliable systems to manage and account for public funds. The following documents will be submitted at the City's request:

- Complete audit reports for each of the past two years for the applicant, including a single audit per 2 CFR 200.500 as appropriate, any audit findings, corrective action plan, management letter and agency response.
- If the applicant organization has not been audited:
  - Financial statements for each of the past two fiscal years and a year to date statement certified by the applicant's Chief Financial Officer. Financial statements will include balance sheets and cash flow, revenue and long-term debt statements.
- Nonprofit organizations will need to submit an IRS Form 990 for the prior two years.
- Outstanding City Annual, Close-out or Monitoring Reports.

Applicants will need a signed board resolution or board minutes authorizing submittal of a Housing Development application. If selected for funding, the organization's board must designate in writing the person(s) authorized to execute agreements on behalf of the organization.

## SECTION 205. APPLICATIONS

All applications must be submitted in the format and with the information prescribed by the program or Notice of Funding Availability (NOFA). Applicants should start the process early by reviewing this Housing Guidelines and Procedure Handbook and the NOFA. If you have questions, contact City Housing staff for clarification as early as possible in the process.

- A. Review Process. The application review process includes the reading of each application by a team of City, other agency staff and potentially City volunteers. The review team will determine whether the project and/or applicant meet minimum requirements, and then review the project for need and, as applicable, score the project based on the competitive selection criteria published with the NOFA. Staff may contact applicants for clarification about their responses and for additional information about the project.
- B. Preliminary Priority Ranking List. The City staff, after review of the applications, will prepare a preliminary priority ranking list of projects. This ranking will be based on the competitive selection criteria published with the NOFA, and will be made publicly available for review. For those programs, such as Emergency Repair and Acquisition and Opportunity Loans that are on a first-come, first-served basis, this step in the process is skipped.
- C. Citizen Advisory Recommendations. The Community Development Advisory Board and/or Loan Review Board, will review the priority rankings and take input on those rankings. After receiving input, the citizen board will make recommendations for funding to the Mayor.
- D. Mayor. The Mayor is authorized to select projects for funding and to approve, make and modify loans, grants or other expenditures, subject to the appropriation of sufficient funds approved by City Council.
- E. City Council. The City Council approves the City's Annual Action Plan for federal HUD funding. Any projects that include federal funding must be included in the adopted HUD Annual Action Plan. The City Council must appropriate sufficient funding for Housing Levy programs, and the City Council may amend the Housing Levy Plan as deemed necessary or appropriate.

## SECTION 206. SITE AND NEIGHBORHOOD STANDARDS

New construction of rental housing must meet the site and neighborhood standards outlined in 24 CFR § 983.57(e)(2) and (3). The site must not be located in an area of minority concentration, except as permitted, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

## SECTION 207. SITE CONTROL

Site control is typically required at the time of application for development projects. See NOFA for any exceptions to this requirement.

Site control through ownership of a property is preferred to site control through a long-term lease except in cases where the City is lessor, or the lessor and the lessee agree to accept the loan conditions described below and the City receives security in both leasehold and fee interests. Exceptions that meet the intent of the program would be preservation of manufactured housing on leased land.

Site control documentation includes the following: a deed of trust, current option, current purchase and sale agreement, a current title report showing the entity holding fee simple title, an executed lease agreement for the length of the commitment to serve low-income households, or an executed disposition or development agreement.

Exceptions are allowed for scattered site homeownership programs, and owner occupied rehabilitation. In most cases, site control is required before the project funding agreement is executed.

Projects involving a borrower that is a lessee where the lessor and lessee do not both accept these terms and conditions will be permitted under the following conditions:

1. Loans should be structured to provide for repayment over the life of the lease.
2. Where leases might be less than one year in length, e.g. manufactured home parks, then loans should not exceed \$9,000 unless the lessee (fee interest) agrees to loan conditions and security.

## SECTION 208. ENVIRONMENTAL REVIEW

Rental and homebuyer development projects that include new construction or substantial renovation/rehabilitation<sup>2</sup> will provide a Phase 1 Environmental Site Assessment (ESA) at the time of application to insure that any environmental hazards are recognized and mitigated. Each assessment will include limited surveys of lead-based paint, asbestos, mold, and wetlands as applicable. If any hazards are identified, they will be abated or mitigated before occupancy. The Phase 1 ESA must be dated one year or less from the due date of the City application.

Projects receiving state and/or federal funds (e.g. HOME Investment Partnership or Community Development Block Grant) must meet state requirements under the State Environmental Policy Act (SEPA) and federal environmental review requirements under the National Environmental Policy Act (NEPA) as applicable.

Environmental Review of projects that do not include new construction or substantial renovation, nor federal or state funds, will undergo environmental review to ensure that:

- Historic places will not be compromised;

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<sup>2</sup> See Section 212 for a definition of “Substantial” in the context of renovation and rehabilitation.

- The project is not located in a floodplain; and
- There are no hazardous toxic materials or radioactive materials on or near the property that could affect the health of the occupants.

### SECTION 209. COST-EFFECTIVE LONG-TERM INVESTMENTS

Proposals for quality affordable housing must demonstrate a cost effective, sustainable investment of public funding. Following are minimum requirements:

1. Land acquisition costs must be justified and represent a competitive market price.
2. Design must clearly promote efficient use of space and utilities.
3. Per-square foot and per-unit costs should reflect current market trends for the type of housing being produced.
4. Low per-square-foot land acquisition costs should not be sought at the expense of considerable site work challenges.
5. Fees for contractors and professional services must be competitive.
6. Unnecessary costs are avoided whenever possible.

### SECTION 210. APPRAISAL

If the applicant is proposing the purchase of real property and/or building(s), a full appraisal must support the purchase price. If the property is clearly being offered at a below market price, a current property tax assessment may be acceptable.

An appraisal must be dated no more than 12 months prior to the application due date. A letter updating an appraisal completed more than 12 months prior to the application due date will be accepted. At a minimum, the City requires an appraisal based on the highest and best use. The appraisal must be conducted by someone with a current general appraisal certificate in the State of Washington.

An appraisal is NOT required if City funds are not being used for acquisition of the property. However, the value of that property must be supported at a minimum by the county's current tax assessment.

### SECTION 211. PREVAILING WAGE AND LABOR REQUIREMENTS

Applicants seeking Housing Levy development or preservation funds should assume that state prevailing wage rates (Chapter 39.12 RCW) will apply, and build the requisite costs into all project development budgets, unless they obtain a determination otherwise from the Washington State Department of Labor and Industries (L&I). Applicants are advised to consult with L&I and/or private legal counsel prior to applying for funding to determine whether prevailing wages must be paid and, if so, whether commercial or residential rates apply. The

Washington State Department of Labor and Industries has the following website providing information on prevailing wages: <http://www.lni.wa.gov/TradesLicensing/PrevailingWage/>. The telephone number is (360) 902-5335. If an applicant receives a loan that is incurring interest, is not forgivable, and is required to be repaid in full, such loan in and of itself is not expected to trigger a requirement that prevailing wages be paid on the project. However, if the applicant is receiving other public funds and/or is a public entity (e.g. housing authority), it may be required to pay prevailing wages on the project. A definitive determination regarding the applicability of Prevailing Wage law can only be obtained from L&I.

Applicants seeking funds should also assume that federal labor requirements will apply, if applicable, as the City reserves the right to assign federal and/or Housing Levy funds for projects. When federal funds trigger prevailing wages determined under the Davis-Bacon Act in a project, the higher of either the State Residential Prevailing Wage Rates (unless modified as stated below) or Davis-Bacon wage rates will apply to each job classification, unless applicable law requires otherwise. The PCD Director may approve a change in these prevailing wage requirements if necessary to achieve compatibility with a state or federal funding source or to promote inclusion of Levy-funded units in mixed income and/or mixed-use buildings. In cases where Davis-Bacon wages are triggered, Davis-Bacon monitoring procedures are followed instead of City monitoring procedures.

## SECTION 212. EVERGREEN SUSTAINABLE DEVELOPMENT STANDARDS (ESDS)

All City-funded housing projects that include construction must demonstrate sustainability based on the Washington State requirements for Evergreen Sustainable Development Standards, where applicable.

The ESDS separates construction into three categories:

- New Construction: A project that includes site prep, bringing utilities onsite, new foundation and building, new landscaping.
- Substantial Renovation: A project that includes replacement and/or improvement of at least two major systems of the building, including its envelope.
- Moderate Renovation: A project that does not fully gut and expose the structure and air barrier of the building envelope or replace/improve more than two major systems of the building.

Applicants must submit the latest edition of the Evergreen Application Checklist with their initial application for City funds. Details are available through the Washington State Department of Commerce

(<http://www.commerce.wa.gov/Programs/housing/TrustFund/Pages/EvergreenSustainableDevelopment.aspx>). The sustainable features identified in the completed Evergreen Application

Checklist must also be included in the project's total development budget and construction cost estimate.

Projects that do not include Washington State Housing Trust Fund or Low Income Tax Credit funding will be monitored for compliance by the City using the following procedures.

**A. Evergreen Project Plan.**

Once a project is approved for City funding, the applicant will submit an Evergreen Project Plan (EPP). This form that can be found on Commerce's website listed above along with any required attachments. Each criterion outlines what is expected in the EPP and Required Documentation is indicated. Each attachment should clearly indicate at the top of the page which criterion it is for. Also, each attachment should clearly indicate how it meets the requirements.

**B. Evergreen Coordinator.**

The applicant must designate an Evergreen Coordinator (EC) as their agent regarding the implementation of the ESDS. The EC will have the following responsibilities: Understand the specifications for all of the ESDS measures in the project.

- Prepare the Evergreen Application Checklist for the applicant to submit with their initial application.
- Prepare the EPP for COB Housing Development approval.
- Prepare and maintain the Evergreen Binder. Ensure that it is up-to-date with the appropriate technical submittals and available for verification on the job site at all times. Communicate the progress, coordinate site visits, and facilitate verification and quality control with COB staff.
- Communicate with COB Housing Development regarding EPP implementation during construction.
- Oversee the construction process to make sure that the ESDS features are implemented and correctly installed, and troubleshoot any ESDS problems with the general contractor or sub-contractors.

**C. Evergreen Project Plan Implementation.**

The City will verify compliance with the Evergreen Project Plan based on the size of the project as follows, where total project costs do not include acquisition costs:

- For projects over \$600,000 of total project cost, regardless of funding source, third party verification (3PV) per Department of Commerce Housing Trust Fund Guidelines found at chapter 207.5 of the Handbook will be used. A link to the handbook can be found under "Program Links" here: [www.commerce.wa.gov/building-infrastructure/housing/housing-trust-fund/](http://www.commerce.wa.gov/building-infrastructure/housing/housing-trust-fund/).
- For projects between \$250,000 and \$600,000 of total project cost, the following verification method will be used:

- COB Housing Development will appoint a staff person to conduct on-site inspections in a consistent, fair, and transparent manner. The goal is to verify the correct implementation of ESDS features without holding up construction.
- ESDS on-site inspections should be scheduled to coincide with draw inspections.
- The responsibilities of COB staff are:
  - Initially review the project plans, specifications, and construction cost estimate to verify that the features and details on the EPP are included.
  - Track the application and installation of the features and details on the EPP during construction. Verify through direct observation that all measures are implemented and that the quality of the installation meets the specifications. Additional documentation may be requested by COB staff from the EC as needed.
  - Provide onsite technical assistance
  - Make a determination whether each individual ESDS feature in the EPP is installed appropriately and record the results of their observations during and after the completion of construction.
- For projects under \$250,000, Evergreen Project Plan Implementation will be considered on a case by case basis.

#### **D. Evergreen Binder.**

The Evergreen Binder contains the documents necessary for onsite review of the ESDS elements of the project. The Evergreen Binder is required to be on the jobsite, complete and up to date throughout construction. The Evergreen Binder consists of the Contracts Document Table, the EPP and any necessary attachments. The Contracts Document Table and the instructions for the Evergreen Binder are located on the Washington State Department of Commerce ESDS webpage listed above, in an excel spreadsheet.

#### **E. Evergreen Waivers.**

Due to the variation in projects, the City may consider waivers for specific ESDS Criteria. The project sponsor must demonstrate:

- That the criterion creates an excessive hardship or is inadvisable for a specific project, and
- That an alternative path is identified and will be implemented that meets the intent of the criteria.

For waivers to be considered, project sponsors must notify the City in writing and include information demonstrating the above requirements for the specific criterion.

#### **F. Compliance**

Should a completed project fail to meet threshold requirements, including verification of mandatory ESDS criteria, the applicant will be held responsible for correcting the failure. The applicant is also responsible for ensuring that the project is operated according to the Management Plan and the Owner's Manual. The City will visit the project periodically while the

housing development contract is in effect and assess whether the project is being managed according to the approved documents.

### SECTION 213. MINIMUM HOUSING AND PROPERTY STANDARDS

#### **A. New Construction.**

1. New construction is required to meet all state and local codes and ordinances, including the Model Energy Code and all Handicapped Accessibility requirements.
2. If the project includes HOME Investment Partnership funds, the City will require review and written approval of written cost estimates, construction contracts, and construction documents. Cost estimates need to be consistent with the project's application and pro forma, and construction documents will be reviewed for consistency with code and Evergreen Sustainability requirements.
3. The City will conduct construction progress and final inspections to ensure the work is done in accordance with applicable codes, the construction contract, and construction documents.

#### **B. Preservation/Rehabilitation and Acquisition of Standard Housing.** When City financial assistance is used to rehabilitate/preserve, or acquire existing housing, that housing must meet the following minimum standards in addition to state and local codes, and Evergreen Sustainability Standards, as applicable.

1. Initial Inspection: The City must conduct an initial property inspection to identify the deficiencies that must be addressed in accordance with this section.
2. Health and safety: The following life threatening deficiencies must be addressed immediately for occupied housing units:
  - i. Electrical:
    - Install missing outlets/switches
    - Replace any missing/broken outlet/switch cover plates
    - Replace any missing Breakers/Fuses
    - Repair exposed electrical wires/open panels
    - Water Leaks on or near electrical equipment
    - Smoke detectors installed on each level of the dwelling unit and one in each room used for sleeping and the adjacent hall.
    - Replace Smoke and Carbon Monoxide Detectors that are not functioning
  - ii. Plumbing:
    - Broken/leaking water supply lines
    - Broken waste water lines
  - iii. Egress:
    - Open/clear any blocked exits & entrances to building/unit; doors and windows
    - Remove security bars on windows that prevent egress

- Replace visibly missing components of fire escapes
- iv. Ventilation:
    - Gas/Oil Fired Unit -Missing/Misaligned Chimney
    - Propane/Natural gas/methane detected
  - v. Fire Protection:
    - Missing/damaged/expired fire extinguishers
3. **Major Systems:** Major systems include structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; and heating, ventilation, and air conditioning.
    - i. **Rental Housing:** Rehabilitation of rental housing projects require an assessment of the remaining useful life of major systems upon completion of the project. Multifamily housing projects of 26 units or more require a capital needs assessment to identify the useful life of major systems. If the remaining useful life or one or more major system is less than the applicable period of affordability, the City will require a replacement reserve to be established with monthly payments to the reserve in an amount adequate to repair or replace the systems as needed.
    - ii. **Homeownership:** Upon project completion, each of the major systems must have a remaining useful life for a minimum of 5 years, unless a longer period is specified in written commitments. If the remaining life of major systems is less than 5 years, those major systems must be rehabilitated or replaced as part of the rehabilitation work.
  4. **Accessibility:** As applicable, housing units must be in accordance with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act.
- C. **Property Standards, Including Acquisition of Standard Housing:**
1. Housing which lacks one or more of these required items will not meet City of Bellingham Property Standards required for funding assistance:
    - i. **Light Fixtures/Electrical -**
      - (a) Each room used for sleeping must have at least two working outlets or one working outlet and one working, permanently installed light fixture. Bathroom must have one working permanently installed light fixture and one working outlet. Kitchen must have one working permanently installed light fixture and one working outlet (prefer more outlets, located for use in food preparation). Living room must have two working outlets or one working outlet and one permanently installed ceiling or wall light fixture. Other rooms used for living and halls must have a means of natural or artificial illumination such as a window or permanent light fixture or wall outlet.
      - (b) Smoke detectors, one on each level of the dwelling unit and one installed in each room used for sleeping and the adjacent hall.
    - ii. **Plumbing Fixtures**
      - (a) Kitchen - A permanently attached sink with running hot and cold water from faucets and a properly connected and working drain (with "gas trap").

- (b) Bathroom - A flush toilet enclosed in a room that provides privacy; a permanently installed wash basin or lavatory with running hot and cold water from faucets and a properly connected and working drain; a tub or shower with running hot and cold water from faucets and a properly connected and working drain. These items need not all be in the same room but they must be private.
  - iii. Range and Oven - Both a range and oven that are properly hooked up and working.
  - iv. Refrigerator - A working refrigerator that will maintain a temperature low enough to keep food from spoiling over a reasonable period of time.
  - v. Cabinets and Countertops - Adequate space for food storage and preparation.
  - vi. Ventilation - A mechanical means of ventilation or sufficient number of operable windows to provide for ventilation of the living space. Special bathroom requirements - an operable window or working vent system.
2. Living units having one or more of these defects of condition or installation will fail:
- i. Walls and Ceilings - Large cracks or holes that allow drafts; severe bulging or leaning, large amounts of loose or falling surface material such as plaster, wall board or peeling paint and paper.
  - ii. Floors - Large cracks or holes, missing or warped and uneven floor boards, coverings loose enough to cause someone to trip. Floor coverings in kitchen and bath that are cracked or torn and allow water to get underneath them. Floor coverings that cannot be cleaned and kept clean.
  - iii. Windows - Cracked or missing glass; loose fit that allows drafts; missing putty; deteriorated jambs, frames and other members.
  - iv. Electrical Hazards - Service too small for the demands made by the normal household use; exposed, broken, non-insulated wiring; unsupported hanging fixtures; missing cover plates on switches, outlets; exposed fuse box connections; evidence of overloaded circuits.
  - v. Plumbing - Leaks in supply or waste lines; presence of rust and contamination; broken or leaking fixtures.
  - vi. Heating Equipment - Unvented fuel burning space heaters; any potential fire hazards or threats to safety; improper connection of flues; improper installation of equipment; indications to improper use of equipment; equipment too small to maintain a proper level of heat throughout the house.
  - vii. Water Heater - Too small for size of family that would normally occupy the unit; improper venting; lack of temperature pressure relief valve and discharge line; improperly installed temperature - pressure relief valve and discharge line.
  - viii. Sewer - Not connected to a sewer system or approved private disposal system; evidence of sewer back up; sewer gas smell.
  - ix. Other Hazards - Evidence of cats or other vermin infestation; evidence of insect infestation; poor air quality in unit; inadequate provision for storage and timely removal of refuse.

- x. Lead Paint - Any interior painted surfaces that are chipping, peeling, cracking, that are noticeably loose and separating from the surface material (regardless of whether the paint has been tested for lead content).
  - xi. Security - Any door or window accessible to the outside that is not lockable.
  - xii. Stairs, Porches, Decks, etc. - Structural defects, missing handrail or railings, rotting or missing steps.
  - xiii. Foundation - Structural defects that indicates potential for collapse, buckling, sloping or sagging; severe deterioration or rot in wood structural or support members.
  - xiv. Roofs - Structural defects that indicate the potential for collapse, buckling, sagging, missing flashing or shingles; holes or other defects that would allow for water infiltration.
  - xv. Chimney - Serious leaning or disintegration, signs or chimney fire, improper connection of flues.
  - xvi. Any other deteriorating, rotting, or missing elements that would cause an unsound or hazardous condition.
3. Homeownership: Upon acquisition, each of the major systems must have a remaining useful life for a minimum of 5 years, unless a longer period is specified in written commitments. If the remaining life of major systems is less than 5 years, those major systems must be rehabilitated or replaced as part of the rehabilitation work.

#### SECTION 214. COMPETITIVE SELECTION OF CONTRACTORS

Applicants must competitively select their contractors if the project work includes construction or rehabilitation of structures and/or real property. Applicants must propose a competitive process. The applicant shall submit a summary of their proposed competitive selection process. The City reserves the right to review and approve the process prior to implementation.

#### SECTION 215. CONSTRUCTION PLANS AND SPECIFICATIONS

Construction contracts and construction documents must be provided in adequate detail and reviewed by the City to ensure that the documents address minimum housing and property standards, as well as city and/or state code requirements. Applicants must also provide written cost estimates prior to execution of construction contracts to ensure that costs are reasonable.

#### SECTION 216. REPLACEMENT RESERVES

Replacement reserves are intended to accumulate and provide funds when needed to replace or maintain major systems of the building. The amount of replacement reserves from capital and/or operating income over time should be able to pay for the projected major maintenance and replacement needs of that project for the next 20 years, but should generally not be less than \$350 per unit per year. The per unit reserves are reflected in the development budget if they are

capitalized and they are reflected in the operating pro forma if they are to be deposited out of operating income.

Minimum replacement reserves for rehabilitation projects shall be determined by the required capital needs assessment and life cycle cost analysis. The estimated useful life estimates of a life cycle cost analysis must come from a nationally recognized organization such as “Marshall and Swift”.

Applicants must assess their projects and establish replacement reserves based on maintaining long-term viability of the property. The assumptions behind the amounts put into the budgets should be stated as part of the narrative explanation for that line item.

#### SECTION 217. DEVELOPER FEES

The City will allow no more than 10% of the City funds awarded go towards a Developer Fee. Reimbursement of the developer fee payable from City funds will be proportional to the degree of project completion or City funds drawn, at the discretion of the City or as set forth in the project funding agreement. Not less than 10 percent (10%) of the developer fee payable from City funds shall be retained by the City until the applicant has completed the project and complied with all submittal requirements and terms and conditions of the contract.

The following activities are intended to be compensated by the developer fee, whether or not the project applicant uses its in-house staff to perform them. No additional fee will be paid to cover the cost of hiring outside consultants or experts to perform the activities, except for certain relocation activities. No reimbursables are allowed; the developer fee is intended to cover all expenses related to activities.

## A. Preconstruction

1. **Initial feasibility:** Determine potential funding sources, prepare preliminary development budget, prepare preliminary operating budget site search: Identify and evaluate properties (title, occupancy, insurance, zoning, etc.), confirm compliance with CHAS policies, follow City siting procedures, determine possible ownership structures.
2. **Predevelopment financing:** Identify sources and prepare applications, negotiate loan terms and conditions, revise project budgets as necessary, predevelopment loan closing, establish procedure for and execute disbursements, submit reports as required.
3. **Site control:** Complete title research, neighborhood notification per City policy, prepare purchase and sale agreement for legal review; modify as necessary, negotiate terms with seller, sign site control documents.
4. **Development team:** Select and negotiate contracts with: architect/engineer, legal counsel, developer, hazmat inspectors, soils analyst, management agent, other development team members, coordinate team meetings, coordinate and track team activities, prepare necessary reports and information.
5. **Final feasibility:** Review and revise design development, review and revise project budgets, finalize selection of all funding sources, determine allocation of costs among funding sources, finalize ownership structure of project, complete due diligence, including: extent and cost of hazmat abatement; DCLU issues: title, zoning, and legal issues, development management plan, including: management and marketing staff plan, resident composition and housing needs, schedule of activities through rent-up.
6. **Relocation activities:** determine relevant relocation policies, determine extent of relocation and/or displacement, prepare relocation plan, budget, and schedule.
7. **Completion of financing:** Review financing package with City, finalize and submit all funding proposals, obtain funding commitments, review and evaluate loan documents, negotiate loan terms, prepare disbursement schedule and procedures, sign documents at loan closing(s).
8. **Property acquisition:** Complete negotiations with seller, satisfy contingencies in purchase and sale agreement, arrange for closing extensions if necessary, assemble and review necessary materials and documentation, select escrow agent and review escrow agreements, close on property, implement marketing plan.
9. **Occupancy:** implement tenant screening and selection process, monitor rent-up process, establish any necessary bank accounts.
10. **Close-out:** Submit final draw request, cost certification and certify relocation activity.

## B. Construction

1. **Working drawings and specifications:** Review design issues with architect; determine alternatives; arrange budget modifications with funding sources.
2. **Permits and approvals:** Complete applications for all permits, attend pre-design conference with City planning department (DPD), negotiate code issues with DBP, obtain

approvals from design commission, obtain approvals from Fire department, coordinate MUP process.

3. **Contractor selection:** Manage bidding process; arrange inspections of property, negotiate and sign contract.
4. **Construction start-up:** Establish plans for quality assurance of construction progress, wage reporting, WMBE reporting, subcontractor utilization, and reviewing change orders; Participate in pre-construction conferences.
5. **Hazmat abatement:** Select consultants for asbestos, lead paint, etc., coordinate preparation of specifications and bid documents; conduct bidding process for contractors, prepare and sign abatement contracts, monitor abatement process through completion.
6. **Construction:** Attend weekly construction meetings, monitor construction progress, including regular site visits; review change orders and monitor funding, review draw requests and submit to lenders, monitor draw payments to contractor, coordinate relocation activities; ensure compliance with Section 3, WMBE, and wage rate requirements; oversee project close-out, including final inspections, reports and documents, punch list review, obtain certificate of occupancy, sign final loan closings and review repayment schedule and procedures.
7. **Occupancy:** Follow up on warranty or call-back items.
8. **Close-out:** Complete WMBE, wage requirements and contractor retainage issues.

#### SECTION 218. MONITORING FEES

The City will charge Monitoring Fees for Production and Preservation, and Homebuyer projects. Monitoring fees are due at the time of loan closing that will be used to monitor the project for the period of affordability that is required for projects. Projects need to include this fee in their Project Budget. The fee is an eligible expense for City funds and needs to be included in the Project Budget.

- A. Rental and Preservation Projects.
  - i. The annual fee is \$450 for projects with 10 or fewer housing units
  - ii. For projects with 11 or more units, the annual fee is \$450 plus \$25 per unit each unit over 10.
- B. Homebuyer Projects. A one-time monitoring fee of \$1,000 per unit is required.

#### SECTION 219. HISTORIC RESOURCE PROTECTION

Housing development that requires the demolition of structures listed in the local, state or national register, or identified as contributing to an historic district in the city's historic resource inventory are not eligible for Housing Development funds.

Housing development on a vacant property upon which previously stood a structure that was listed in the local, state or national register, or was identified as contributing to an historic district in a city historic resource inventory are not eligible for Housing Development funds unless a minimum of five years has lapsed between the date of demolition and application for Housing Development funds.

This requirement may be waived if demolition is authorized by either the city's historic preservation commission for structures on the local register or the director for structures identified as contributing to an historic district in the city's historic resource inventory or on the state or national register. The demolition waiver determination shall be based on the criteria in BMC [17.90.060\(D\)\(2\)](#) and (3).

### SECTION 220. AFFIRMATIVELY MARKET FAIR HOUSING

Fair and equal housing, having its basis in the Fourteenth Amendment to the United States Constitution adopted in 1868 and the Civil Rights Act of 1964, has historically been a desired goal of this nation. The City of Bellingham, committed to nondiscrimination and equal opportunity in housing, establishes procedures to further this commitment and to affirmatively market units receiving funding through the City.

The City of Bellingham believes that individuals of similar economic levels in the same housing market area should have available to them a like range of housing choices regardless of their race, color, religion, ancestry, national origin, familial or marital status, disability, sex, sexual orientation or gender identify.

It is the affirmative marketing goal of the City of Bellingham to assure that individuals who normally might not apply for vacant rehabilitated, constructed or for sale units, or rental assistance, because of their race or ethnicity:

- know about the vacancies;
- feel welcome to apply; and
- have the opportunity to rent or purchase the units.

It is the City of Bellingham's policy to require substantial steps by project owners or sponsors to carry out affirmative marketing. Housing units which are offered financial assistance by the City must be affirmatively marketed in accordance with this policy. Owners or rental assistance providers should provide for costs associated with these requirements in their planned operating costs.

If it is feasible to advertise in advance of selecting a purchaser or tenant without holding the unit off the market, participating property owners will be required to make information on the availability of the units known through:

- advertisements in the Bellingham Herald and other publications of general circulation, if the owner ordinarily advertises available for sale or rental units in news media;
- the placement of flyers describing the availability of units with the Opportunity Council, Unity Care NW, and Sea Mar Community Health Center since lower income persons who may seek assistance often use the services of these agencies; or
- notifying the Bellingham Housing Authority of vacancies and requesting that its staff inform applicants on its waiting list about upcoming vacancies.

The City of Bellingham will emphasize to owners, sponsors and rental assistance providers that, to the extent feasible without holding units off the market, they prioritize special outreach efforts to historically disenfranchised groups (as indicated below). Information about upcoming vacancies would then be made available to the general public after these special outreach efforts are underway.

The City of Bellingham has determined the racial/ethnic characteristics of the current tenants and of residents in the selected neighborhoods. Based on this analysis, the City has concluded that persons who are not likely to apply for rehabilitated housing without special outreach are Southeast Asians, Hispanics, African Americans, and Native Americans. Based on our identification of these groups, the City of Bellingham requests owners, sponsors and rental assistance providers to contact local agencies and organizations whose memberships are primarily among those groups requiring special outreach.

**Native Americans**

Lummi Indian Housing Authority  
2616 Kwina Road  
Bellingham WA 98226

or

Nooksack Indian Housing  
3891 Uluquance Drive  
Deming WA 98244

**Hispanics**

Lynden Community Center  
401 Grover Street  
Lynden WA 98264

or

Sea Mar Community Health Centers  
800 E. Chestnut  
Bellingham WA 98225

or

Community to Community Development  
203 West Holly St, Suite 311

Bellingham WA 98225

**African Americans, Asians, and others**

Multicultural Center  
516 High Street  
Western Washington University  
Bellingham, Washington 98225-9023

or

Whatcom Human Rights Taskforce  
315 Prospect Street  
Bellingham, Washington 98225

The City will require owners to keep records on:

- the racial, ethnic and general characteristics of tenants and applicants,
- activities undertaken to inform the general public about rental opportunities, and
- activities undertaken for special outreach.

Projects with five or more units assisted with City funds must provide an Affirmative Marketing Plan, consistent with this policy, prior to City payment of any incurred expenses of the Owner or rental assistance provider.

If the owner fails to carry out this policy and the Affirmative Marketing Plan, the City may enforce this policy by requiring the owner or rental assistance provider to notify the City immediately upon learning that a unit will be vacant, require increased advertising and special outreach, and repay loans or grants for failure to comply.

The City will annually assess the success of affirmative marketing actions in the annual report required by HUD (Consolidated Annual Performance Evaluation Report) and the Housing Levy. The assessment will identify what corrective actions will be taken where affirmative marketing requirements are not met, including any changes that might be needed for projects receiving financial assistance from the City.

**SECTION 221. ANTI-DISPLACEMENT AND RELOCATION**

Relocation assistance is required if a displaced tenant is low-income, or when federal funds are used in the project. Housing Levy funds may not be used that would result in the displacement of low-income residents unless all units are replaced within three years of demolition or conversion. (See Resolution 59-91.)

Relocation costs are an eligible Housing Levy expense for rental development and preservation projects, but are not an eligible cost for homebuyer program.

Housing Levy funds shall not be used to finance development of replacement housing developed as a condition to any land use, zoning or other regulatory requirement.

If relocation is required by the City or other funder, the applicant must submit a relocation plan approved by that funder that has jurisdiction over tenant relocation issues.

## SECTION 222. MAXIMUM PER-UNIT SUBSIDY

### A. Rental Development Projects:

1. The Total Development Cost (TDC) Unit Limit Schedule adopted by the Washington State Housing Finance Commission (WAC 262-01-130(8)(a)) will be used by the City to set maximum per-unit subsidy limits. In general, the City will provide a maximum of 40% of total development costs (TDC) of a rental development project. Funds are awarded competitively, and the actual City percentage is generally no more than 25%.
2. The PCD Director may allow for up to a total of 50% of residential TDC to be paid by City funds for projects that meet one of the following criteria:
  - i. Projects that are located in an area with little or no subsidized housing or in an area identified in the City's Comprehensive Plan or other adopted policies as one in which subsidized housing should be encouraged.
  - ii. Projects that provide special amenities and/or unique design features for the proposed tenant population such as large units for families; units requiring reconfiguration to meet the needs of the proposed population; or special design features resulting from the participation of potential tenants and/or community members in project development.
  - iii. Projects where other public funders have made their maximum award and the project is a housing priority as described in the A & F Plan or the City's Consolidated Plan.

### B. Homebuyer Projects. Homebuyer assistance will be limited to the amount needed for each buyer household, providing gap financing for low-income borrowers unable to qualify for sufficient private financing to purchase a home.

1. Non-resale restricted homes: Eligible buyers purchasing non-resale restricted homes may receive homebuyer assistance up to a maximum of \$30,000 per assisted household, including Levy funds and other City-administered funds. The price of homes purchased can be no greater than the median sales price of housing within the City of Bellingham. All non-resale restricted homes are available only as loans with shared appreciation of any resale proceeds as set forth in the loan documents.
2. Resale restricted homes: Homebuyers purchasing properties subject to resale restrictions may receive homebuyer assistance up to a maximum of \$35,000 per assisted household, including Levy funds and other City-administered funds. To be eligible for this level of assistance, the resale of the home must be restricted to homebuyers for a period of at least 50 years and the resale price must be restricted to an amount affordable to a buyer at 80% of area median income. Resale restrictions must be in the form of a ground lease,

covenant, or other recorded document approved by the City. The price of homes purchased can be no greater than the median sales price of housing within the City of Bellingham, unless otherwise accepted for the resale incentive program outlined below.

- C. HOME (federal) funded projects. If the City allocates federal HOME Investment Partnership funds to a project, the total amount of HOME funds that the City may invest on a per-unit basis may not be increased above 240 percent of the base limits established under section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii) for elevator- type projects in Bellingham.

## SECTION 223. UNDERWRITING GUIDELINES AND STANDARDS

Before committing funds to a project, the City will evaluate the project in accordance with the following guidelines which determine a reasonable level of profit or return on the owner's or developer's investment in a project.

- A. Reasonable Costs.
1. Rental Development Projects. Rental development project costs are considered reasonable if they are within the Total Development Cost (TDC) Limits set by the Washington State Housing Finance Commission for Bellingham projects. If the project exceeds these limits, the owner or developer will be required to submit a waiver request that identifies project characteristics that create cost levels above these limits.
  2. Homebuyer Projects. No housing purchases, constructed or after-rehabilitation value may exceed 95 percent of the median purchase price of owner-occupied homes in Bellingham.
  3. Rehabilitation or Preservation Projects. Rehabilitation or preservation projects over \$100,000 in City funds must be justified by a construction cost estimate prepared by a professional independent third party. Projects less than \$100,000 of City funds do not require an independent construction cost estimate if at least three competitive bids are obtained or an independent construction cost estimate is completed.
- B. Debt Coverage Ratio. Projects must have an overall Debt Coverage Ratio (DCR) that provides a cushion against risk that may result from unforeseen circumstances, including higher than anticipated vacancy rates. Deferred loans are not considered in the DCR calculation during the deferral period, only the year when they become due and payable. The annual contributions to operating and replacement reserves must be included in the operating expenses when calculating the DCR. Projects should have an overall DCR of at least 1.10:1. The City reserves the right, during contract development, to direct the use of excess cash flow when a project has an overall DCR greater than 1.20:1.
- C. Developer Return or Profit.
1. Owner/Developer Investment. The reasonable level of profit or return to the owner or developer for their investment is ten percent. For projects serving homeless, special needs populations or with 12 or fewer units, the reasonable level of profit or return on their investment is 15 percent.

2. Developer Fee. If the return on the owner's or developer's investment is less than 10% of the Total Development Costs (TDC) set by the Washington State Housing Finance Commission, the developer's maximum fee for the project is 10 percent of TDC. (See Section 217 Developer Fees for limits on City's payment of Developer Fees.)
- D. Project Contingencies. If the City is providing funds for construction or rehabilitation of housing, a 10% contingency for new construction and 15% rehabilitation is required. The City may grant exceptions.
  - E. Market Demand. Applicants must, at a minimum, describe efforts to identify properties that are within the proposed project's market area and are available to the target population. A third-party market study must accompany the application if the project involves low-income housing tax credits or if another funder requires a market study. Except as listed above, market studies are not required for the following projects:
    - Scattered site single family acquisition projects
    - Projects for persons with Developmental Disabilities (DD)
    - Projects for persons with chronic mental illness (CMI)
    - Projects for homeless persons
    - Domestic violence (DV) projects
    - Special needs projects for persons with chronic substance abuse issues combined with homelessness and/or other conditions requiring intensive support services

If the project does not meet any of the above criteria, a market study is required. The market study must meet the requirements of the Washington State Housing Trust Fund (HTF) and be submitted with an application for funding if the applicant has site control. If site control has not been obtained, the market study must be submitted upon receipt of site control.

- F. Vacancy Rates. Applicants should use a 3 percent residential vacancy rate and a 10 percent non-residential vacancy rate when preparing their operating pro forma. Exceptions will be allowed if adequate justification is provided, such as in the case of very small or special needs projects. Justification may include information from the Homeless Service Center and Coordinated Entry system if serving homeless-on-entry households.
- G. Developer Experience and Financial Capacity.
  1. Experience: Applicants must demonstrate that the skills and experience of the development team and the property management team, and the capacity of the organization are appropriate to the size and complexity of the project. Applications need to list key development and property management staff, including their qualifications and experience. If the applicant does not have prior experience in affordable housing development, or has not had experience within the past ten years, they must partner with a development consultant experienced in affordable housing development.

2. Financial Capacity: Applicants must demonstrate that their agency, organization or company has sufficient financial capacity to undertake the project and ensure its continued affordability during the time of city funding commitment.
  - i. An operating pro forma is required for rental housing development and preservation projects demonstrating financial feasibility and viability during the affordability period. The operating pro forma must show each year separately and include assumptions, notes and explanations regarding the income and expense projects. Absent a long-term commitment, projects with rental assistance must demonstrate either financial feasibility excluding the rent subsidy, or alternative household/population targets consistent with funding source limitations.
  - ii. The City may also require applicants to submit annual financial statements and/or audits that demonstrate the overall financial capacity and health of the agency, organization or company. Any project with ten or more HOME units will require an annual financial review. The purpose of this review is to reduce any significant risk to the city's affordable housing portfolio and to work to support continued ability of the agency, organization or company to provide quality affordable housing.

H. Other Project Funding Commitments. If the City provides HOME Investment Partnership funds for a project, before the City can enter into a HOME funding commitment, the applicant and/or developer will need to provide evidence of firm written financial commitments from other funders for the project.

## SECTION 224. HOMEBUYER ASSISTANCE

- A. Counseling: Homebuyers which receive financial assistance from the City must receive housing counseling. Counseling must be through a program that is reviewed and approved by the City, HUD, Washington State Housing Trust Fund or the Washington State Housing Finance Commission.
- B. Value Limits: Housing that is acquired with or without rehabilitation may not exceed 95 percent of the median purchase price of owner-occupied homes in Bellingham.
- C. City Financial Assistance through Lenders. There is an inherent conflict when the City provides financial assistance through a nonprofit or for-profit entity that also provides first mortgage financing to the homebuyer since the lender may have an incentive to provide assistance to the buyers. This conflict might jeopardize the lender's objectivity in assessing the qualifications of the buyer or the eligibility of a property. The City will provide such assistance only when outlined in a written agreement meeting the requirements set forth in Section 303, Loan Conditions, Homebuyer Program.
- D. Underwriting Standards. The City's underwriting standards for homebuyer assistance evaluate housing debt and overall debt of the family, the appropriateness of the amount of assistance, monthly expenses of the family, assets available to acquire housing, and financial resources to sustain homeownership.

1. Overall Debt. Debt includes any long-term obligations (a repayment period of more than six months), such as car payments, child support and student loans, plus the minimum monthly payment for all credit card debts. Overall debt may not exceed 45% of adjusted gross household income. The City will verify overall debt through credit and title reports.
2. Housing Debt. Households are expected to contribute no less than 25% of their adjusted gross income to mortgage payments. Overall housing debt requiring monthly payments may not exceed 35% of adjusted gross income.
3. Assets Available to Acquire Housing.
  - i. A homebuyer with net assets exceeding \$20,000 in value must use those assets toward the purchase of the home. Assets include savings, land, manufactured homes, recreational vehicles, boats, art collections, or similar items. Not included in the calculation of asset value are household possessions, cars, tools, IRS-designated retirement accounts, or pensions.
  - ii. Homebuyers must be able to contribute, at the time of closing, at least 1% of the purchase price.
4. Sustaining Homeownership.
  - i. Minimum Income: Homebuyers must have gross incomes at or below 80% of AMI but greater than 50% of AMI, adjusted for household size. The Planning and Community Development Director may waive the minimum requirement of 50% AMI if the homebuyer demonstrates adequate equity and financial reserves to address potential future income reductions and major housing maintenance requirements.
  - ii. Employment and Future Income: Homebuyers must show proof of steady employment or income for at least one year. Income must be sufficient to cover the cost of owning the home, including but not limited to mortgage payments, taxes, insurance, maintenance and upkeep. If applicable, the homebuyer must also show sufficient income to pay ground lease, condominium or homeowner association fees.

## SECTION 225. SUBSIDY LAYERING REVIEW POLICY

Prior to committing funds to a project, the City will evaluate all projects to assure that no more Housing Levy or federal funding provided by the City, in combination with other governmental assistance, will be invested than necessary to provide affordable housing.

- A. Multifamily Projects. The City of Bellingham will use Cash on Cash method of analyzing the project to determine that excessive gain/profits are not derived from the project due to the investment of public funds. The analysis will be based on the proponent's submitted project *sources and use statement and operating budget*. The City may also rely on the Washington State Housing Finance Commission's evaluation, conducted to assure there are no excess tax credits, to ensure that HUD subsidies are not greater than necessary to provide affordable

housing. It is the policy of the City of Bellingham that, for the investment of City Housing Levy and other federal funds, affordable housing projects subsidized by multiple public funds should not have a cash on cash return greater than 10%.

- B. Single Family Owner Projects. Single family properties proposed for homebuyer assistance using City Housing Levy and other federal funds in combination with other public funding will use the following two step process to determine that no more public funds than necessary are invested in the project:

Step 1. Determine homebuyers capacity to borrow. Determine the homebuyers calculated minimum mortgage based on a mortgage payment(s) (principal and interest) that is 25% of borrower’s gross income. Public subsidy in excess of the difference between the calculated minimum mortgage and the sales price is excessive subsidy. In the case of purchase of a condominium, the condominium assessment fees are mandatory payments and, when not paid, create a lien foreclosable as a mortgage. For this reason the condominium assessment fee is to be deducted from the “Amount to monthly mortgage payment at 25%” before the minimum mortgage is calculated.

Example:

Purchase Price	\$ 265,000
Household Monthly Income	\$ 4,200
Affordable Monthly Housing Costs (25% x \$4,200)	\$ 1,050
Mortgage, Affordable (4.98%, 30-year fixed)	\$ 196,042
Maximum Allowed Public Subsidy	\$ 68,958

For condominiums, deduct the condominium assessment fee from the affordable monthly housing costs before determining the affordable mortgage amount.

Step 2: Applicants for single family ownership properties should not have earning (liquid) assets (investment accounts, stocks/bonds, savings accounts but excluding recognized formal retirement accounts and real estate rental income) of more than \$40,000 on hand after the purchase of the property. Exceptions may be granted for cases of special needs (medical, special purpose accounts for tax liabilities, etc.).

**SECTION 226. INCOME DETERMINATION POLICY**

The Housing Levy and other federal funding programs that the City administers have income targeting requirements. The City must determine each household is income eligible by determining the family's annual income. Income determinations must be made not more than six (6) months before funds are committed to the household. Federal funding allows the City to select any of three allowed definitions of annual income.

- A. Owner-occupied housing. It is the policy of the City of Bellingham that when Housing Levy or federal funds are used for owner-occupied residential rehabilitation or to fund acquisition assistance of existing single family homes, annual income shall be the adjusted gross income as defined for the purpose of reporting under IRS Form 1040 series for individual Federal annual income tax purposes. For this determination, the exclusions established at 24 CFR 5.611 must be used.
- B. Rental housing. It is the policy of the City of Bellingham that when Housing Levy or federal funds are used for rental housing, rental assistance or housing service activities, annual income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period, as defined in 24 CFR Part 5 (Part 5 annual income).

The term “adjusted gross income” as used when referring to IRS Form 1040 definition of income should not be confused with the adjusted income which is calculated in accordance with the regulations at 24 CFR Part 5 (Section 8) and used to determine subsidy and payment levels.

The City of Bellingham will use as a guide for application of these annual income definition the United States Department of Housing and Urban Development’s “Technical Guide for Determining Income and Allowances for the HOME Program”. Applicants are encouraged to use HUD's "CPD Income Eligibility Calculator" to determine eligibility and document records. See <https://www.onecpd.info/incomecalculator/>.

#### SECTION 227. FLOATING UNITS

The CITY may approve a "floating unit" regime that allows affordability levels in specific units to change so long as the total number of units at each affordability level in the development is maintained. This designation needs to be made at the time of project commitment if using HOME Investment Partnership funds.

#### SECTION 228. HUD (HOME) REQUIREMENTS

Projects with HOME Investment Partnership funds must meet the following additional requirements.

- A. Initial Occupancy: If the housing is not occupied by eligible tenants within six months following the date of project completion, the owner must submit marketing information and a marketing plan to the City. If the HOME units remain vacant after 18 months from the date of project completion, the City will require the owner to repay the HOME funds invested in those units.
- B. Tenant Protections and Selection:
  - 1. Tenants must be offered written leases for a period of not less than one year, unless by mutual agreement between the tenant and the owner a shorter period is specified.

2. Lease terms must be consistent with the tenant protections set forth in the HOME Rules, 24 CFR § 92.253.
  3. Owners of rental housing must comply with the affirmative marketing requirements of the City pursuant to 24 CFR § 92.351(a) and Section 220, Affirmatively Market Fair Housing of these guidelines.
  4. The owner must adopt and follow written tenant selection policies and criteria consistent with 24 CFR § 92.253(d).
- C. Utility Allowances: The City will determine an individual utility allowance for HOME rental projects either (1) by using the HUD Utility Schedule Model, or (2) by otherwise determining the allowance based upon the specific utilities used at the project. The City will update the allowances annually.
- D. Unsold Homeowner Units: If there is no ratified sales contract with an eligible homebuyer for housing within 9 months of the date of completion of construction or rehabilitation, the housing must be rented to an eligible tenant in accordance with 24 CFR § 92.252.
- E. Homebuyer, Resale Restrictions: The City of Bellingham uses the “resale” and “recapture” method of insuring affordability in the Homebuyer Assistance Program when funded with HOME funds.

1. **Resale Requirements.** This option ensures that the assisted units remain affordable and occupied by a low-income household over the entire affordability period. Upon sale of the property by the initial homebuyer during the period of affordability, the subsequent homebuyer must be a low-income household (80% AMI or below) that will occupy the property as their principal residence. The initial homebuyer must receive a fair return on their investment.

The Resale method is used in the following cases: 1) where HOME funding is provided directly to a developer to reduce development costs, thereby making the price of the home affordable to the buyer and 2) where HOME funding is provided to assist a homebuyer acquire a home on land leased from a community land trust.

2. **Recapture Requirements.** Under recapture provisions, financial assistance must be repaid if it is provided directly to the buyer or the homeowner. Upon resale the seller may sell to any willing buyer at any price. Once the funds are repaid to the City, the property is no longer subject to any low-income affordability restrictions. The Recapture method is used in the following cases where HOME funding is provided directly to a qualified low-income homebuyer to make the home affordable, where the home does not have additional resale restrictions through a community land trust.

- F. Nondiscrimination: Projects which have committed to limit eligibility or preference to a particular segment of the population may do so only if permitted by the City and Fair Housing Act restrictions.
1. Any limitation or preference in housing must not violate nondiscrimination provisions in 24 CFR § 92.350. A limitation or preference does not violate nondiscrimination

requirements if the housing also receives funding from a Federal program that limits eligibility to a particular segment of the population (e.g., the Housing Opportunity for Persons with AIDS program under 24 CFR part 574, the Shelter Plus Care program under 24 CFR part 582, the Supportive Housing program under 24 CFR part 583, supportive housing for the elderly or persons with disabilities under 24 CFR part 891), and the limit or preference is tailored to serve that segment of the population.

2. If a project does not receive funding from a Federal program that limits eligibility to a particular segment of the population, the project may have a limitation or preference for persons with disabilities who need services offered at a project only if:
  - i. The limitation or preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain housing;
  - ii. Such families will not be able to obtain or maintain themselves in housing without appropriate supportive services; and
  - iii. Such services cannot be provided in a nonsegregated setting. The families must not be required to accept the services offered at the project. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services provided in the project.

## CHAPTER 3 - FINANCIAL TERMS

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### SECTION 301. CITY FINANCIAL AWARDS

The City will provide housing awards in the form of amortized loans, deferred loans, recoverable grants, grants or a combination of these.

Grants may be provided to housing projects and housing services serving the lowest income, highest need populations, requiring public operating subsidy to cover basic operating expenses. These projects will typically not have the cash flow or financial ability to service additional debt reflected in the operating pro forma submitted and reviewed as part of the application process. Grants may need to be structured based on the nature and additional sources being leveraged as in the case of HUD funded projects.

Loans may be amortized or deferred. Loans will be structured based on the project's operating pro forma. Deferred loans will have principal and interest, if interest is being charged, due and payable in full on or before the termination date of the contract. Loan terms may be set based on the needs of other funding sources such as the federal Low-Income Housing Tax Credit program.

- A. Loans. Loan terms will vary based on the financial needs of the project. The City's interest in the property will be secured by appropriate collateral and documentation. The City may authorize deferred payment loans for those projects with inadequate sources to repay the loans. Deferred payment loans shall be secured in a manner to ensure that if the project no longer provides the benefits of affordable housing as approved by the City, that the loan (with interest) would become due and payable.
- B. Recoverable Grants. Recoverable grants are funds awarded with no expectation of monetary return, unless the conditions of the grant are not met. Recoverable grants are similar in outcome as most deferred payment loans, but the security in the property may be different.
- C. Grants. Grants are funds awarded with no expectation of monetary return. Rental assistance and housing services are awarded as grants.

### SECTION 302. LOAN CONDITIONS, PRODUCTION AND PRESERVATION PROGRAM

All loans under the Production and Preservation of Homes Program are secured by the property unless otherwise allowed herein. Loan conditions are meant to promote and encourage long-term use of properties for low-income housing. The City may deviate from the loan terms and conditions in the following cases:

1. For tax credit entities, where such loan terms may impair the availability of tax benefits; or
2. When the borrower expects to receive other funding sources from which full or partial repayment of the City loan can be made prior to the normal maturity date.
3. To enable a project to secure other financing, including HUD-insured loans and HUD capital grants.

#### A. LOAN TERMS

Loan terms will vary based on the financial needs of the project. The City may authorize deferred payment loans for those projects with inadequate sources to repay the loans. Deferred payment loans shall still be secured in a manner to ensure that if the project no longer provides the benefits of affordable housing as approved by the City, that the loan (with interest) would become due and payable.

Permanent loan terms will be a maximum of 50 years, unless the loan terms are deferred with a covenant ensuring ongoing housing affordability. The City may provide an acquisition or construction loan for a much shorter term that is eligible for conversion to a permanent loan upon satisfaction of conditions.

#### B. INTEREST RATE

The interest rate for projects not using low-income housing tax credits will generally be 1% for nonprofit-sponsored projects and 3% for private for-profit-sponsored projects. The interest rate for projects using low-income housing tax credits will be a minimum of 1% simple interest and a maximum of the Applicable Federal Rate for the purposes of Section 42 of the Internal Revenue Code, depending on the project's projected capacity for repayment. The actual interest rate for projects using low-income housing tax credits will generally range from 1-3% and will be set on a case-by-case basis. The interest rate will exceed 1% where there is a net financial benefit to the project. The purpose of establishing a range for the interest rate on Production and Preservation of Homes Program funds is to provide flexibility in financial structuring to maximize tax credit equity contributions and to help preserve long-term affordability. Interest on program loans will accrue annually as simple interest.

#### C. REFINANCING OF PRIVATE DEBT

The City may allow refinancing of private debt in cases that result in additional capital investment in the project; that result in a lower interest rate and reduced debt service; or that produce some other long-term project benefit. The City shall review the proposed new financing terms; proposed transaction costs; a capital needs assessment; and the adequacy of reserve accounts. The City may define additional submittal requirements.

#### D. CONTINGENT INTEREST

City participation in project equity (contingent interest) shall be required for all Production and Preservation of Homes Program projects in the event of change of use or sale of property before

the loan maturity date. Upon sale, change of use, acceleration or prepayment of the loan, loan principal plus the greater of either deferred interest or contingent interest shall be due. Contingent interest shall be calculated according to a formula established by the City.

The City's contingent interest should reflect the amount of City funds contributed as permanent financing to a project and should be modified by any additional funds contributed during the loan term, such as capital contributions approved by the City or borrower subsidy necessary to cover operating losses. For example, if the loan is paid or becomes payable before the maturity date, if City funds are 50% of total project costs, the City should receive, in addition to repayment of its principal, 50% of proceeds remaining after repayment of approved project debt (but not including contingent interest owing to other project lenders).

#### **E. PREPAYMENT**

Prepayment of loans will be subject to City approval. Such approval shall not be unreasonably withheld if the borrower provides adequate assurances of future compliance with the affordability and occupancy restrictions in the regulatory agreement and recorded covenant. If a borrower repays the City loan (principal plus the greater of interest or contingent interest) during the first 15 years of the loan term, a prepayment premium may be required if specified in the Note, except as outlined below.

Prepayment premiums shall not be due in the event of involuntary prepayment, due to casualty where there are insufficient insurance proceeds or other sources reasonably available to complete the repairs or condemnation. Prepayment premiums shall not be due where prepayment occurs after the end of the Period of Affordability, or for owner-occupied housing preservation projects.

#### **F. LOAN TERM EXTENSION**

Any unpaid principal balance and accrued, but unpaid interest on City loans will be due and payable at the end of the loan term. Loan documents may provide borrowers with an option of extension, or, in certain circumstances described below, satisfaction of some or all of the amounts owing through extended provision of affordable housing. At the end of the loan term, borrowers will be encouraged to extend the loan term and continue to extend the period of affordability restrictions for an additional 25 years, provided the property continues to be in compliance with the City requirements.

#### G. DEBT SATISFACTION THROUGH EXTENDED AFFORDABILITY

As an inducement to serve extremely low-income households (30% AMI), the Planning and Community Development Director may agree to terms in loan documents, for projects in which 50% or more of the units serve these households, by which, if the loan term is extended for 25 years and the borrower and the property remain in compliance with City loan documents, the debt will be deemed satisfied at the end of that extension period or ratably over the extension period.

For any other projects, principal debt and ordinary interest are not forgivable, but if the period of affordability restrictions is extended after the initial term for an additional 25 years, during which period the loan terms may require payments on the outstanding debt from a portion of net cash flow as determined by a formula approved by the Planning and Community Development Director, then the terms may provide that contingent interest will be deemed satisfied at the end of that extension period or the contingent interest percentage reduced ratably over the extension period.

### SECTION 303. LOAN CONDITIONS, HOMEBUYER PROGRAM

Homebuyer assistance may be used for first or subordinate mortgages, deferred loans, recoverable grants to a qualified nonprofit provider, closing costs, and/or first mortgage loan interest rate write down, as approved by the City.

#### A. TYPES OF ASSISTANCE

Funding assistance for all non-resale restricted homes is available as loans. Loans will generally be 30-year deferred loans. Loans may include provisions for payment of a share of appreciation. Any share of appreciation payable may be reduced and/or eliminated over time. Loan repayment terms shall specify the interest rate, which generally shall not exceed 3% simple interest; loan term; period of payment deferral; and any contingent interest or share of appreciation.

Funding assistance for resale restricted homes is available as either a loan or a recoverable grant. A recoverable grant may be provided to a qualified nonprofit housing provider that will enforce resale restrictions to qualified low-income households through ground lease, covenant, or other recorded document approved by the City. Recoverable grants may include provisions for payment of a share of appreciation. Any share of appreciation payable may be reduced and/or eliminated over time. Recoverable grant repayment terms shall specify the interest rate, which generally shall not exceed 3% simple interest; term; period of payment deferral; and any contingent interest or share of appreciation.

If the City provides a recoverable grant to a qualified nonprofit housing provider that provides a first mortgage loan to a qualified homebuyer, the City must authorize in a written agreement the form and amount of assistance the nonprofit lender will provide to the homebuyer and any conditions that apply to that funding assistance. In addition:

1. The City must verify that the homebuyer is low-income;
2. The City must inspect the housing for compliance with minimum housing and property standards (see Section 213, Minimum Housing and Property Standards); and
3. The nonprofit may not charge any fees (e.g. origination fees or points) to the homebuyer associated with the City's financial assistance and the City must review and determine that the fees and other amounts charged to the homebuyer by the nonprofit for the first mortgage financing are reasonable.

#### B. DOWNPAYMENT

Eligible buyers must provide a minimum of \$2,500 or 1% of the purchase price, whichever is greater, of their own funds toward the home purchase as a condition to any homebuyer assistance loan. Homebuyers may receive gifts of funds towards their portion of the downpayment; however, gifts must not exceed 25% of the homebuyer's total downpayment requirement. Borrowers with incomes 60% of median income or less may provide a lower contribution as follows: (1) for eligible buyers participating in a City-approved nonprofit-sponsored sweat equity housing program that requires significant participation by the homebuyer, the homebuyer's contribution of volunteer time may be accepted in lieu of the minimum cash contribution; and (2) for eligible buyers who have a long-term disability and whose household income includes SSI or similar public income support, gifts may constitute up to 75% of the homebuyer's total downpayment requirement.

#### C. LOAN TERMS

The terms of each homebuyer assistance loan, except loans or grants to community land trusts, shall provide that the entire principal balance is due upon sale or refinancing of the home, at the lender's option, to the extent permitted by applicable law. However, the City may permit assumption of the loan by another eligible buyer household in lieu of repayment.

Borrowers may use any first mortgage product approved by the City, including FHA and Fannie Mae products, and portfolio loans. FHA 203(k) purchase-rehabilitation loans are also eligible, provided the rehabilitation amount exceeds \$5,000.

### SECTION 304. LOAN CONDITIONS, GENERAL

#### A. REPAYMENT

The City will generally make deferred payment loans that are payable in full on sale, on change of use, or at the end of the loan term. Terms generally will permit borrowers to further defer payment of principal, deferred interest, and contingent interest by extending the loan term. Amortizing loans will be required if project budgets can afford repayment and meet required housing cost levels. Terms of repayment required will be established as each project is reviewed.

## B. TRANSFER AND ASSUMPTION

The Planning and Community Development Director may permit the transfer and assumption of the loan, and the transfer of the property acquired, constructed or rehabilitated with the proceeds of the loan, without requiring repayment of principal, interest or other amounts owing under the loan at the time of the transfer, under any of the following circumstances:

- The loan is assumed by a tax credit entity and the entity makes a substantial equity investment in the low-income housing;
- The property is transferred by a tax credit entity to a nonprofit corporation or public agency approved by the Director, including without limitation a transfer to the general partner or manager pursuant to the terms of an option agreement made in connection with the formation of the tax credit entity; or
- The property is transferred, with the approval of the Director, to a qualified nonprofit corporation or public agency, without substantial consideration to the transferor other than assumption by the transferee of outstanding obligations.
- Owner-occupied property is transferred, with the approval of the Director, to a qualified low-income homebuyer.

## C. USE OF FUNDS OWING TO THE CITY

Sale of projects during the loan term requires City consent. Loan payments to the City will be deposited in the Low-Income Housing Fund. Payments will be reallocated by the CITY to low-income housing projects according to priorities established in the current Administrative and Financial Plan or appropriate City policy plans as determined by the City.

## D. NON-RECOURSE

Loans shall generally be made on a non-recourse basis, with the City's remedy limited to its security in the project, project rents, and project reserves, except in cases of fraud, waste, or other circumstances determined by the Planning and Community Development Director to justify recourse against the borrower. The City may require recourse to the borrower or a guarantor for a specific amount of time or until certain conditions are satisfied when the City's security in the property may be inadequate.

## SECTION 305. SUPPORTIVE HOUSING

Loan terms may include requirements specific to dedicating units for people who have been homeless or who have special needs. Borrowers whose projects have units restricted to persons with particular special needs may propose to change the special needs or target population group being served in a project sometime during the loan term. If an event occurs requiring a change in population group served, borrowers with special needs projects will first be required to serve another special needs population. If the City determines that it is not feasible or appropriate, the City may allow for a population of a specific income to be served.

## SECTION 306. SUBORDINATION

Borrowers may request to refinance private senior debt that is secured by the Property. Such approval will be at the City's sole discretion and will not be unreasonably withheld. Borrowers will need to submit a written request documenting their proposed plan and how it will enhance the project, the organization, and provide public benefit.

The criteria the City will use in determining whether to approve a refinancing request include, but are not limited to, the following:

- The extent to which improvements are made to the property through repair, rehabilitation, or other capital improvements;
- The extent to which improvements are made to the debt handling capacity and/or the cash flow of the project;
- The extent to which the City's lien position is improved;
- The extent to which the City's loan is reduced or paid off;
- The extent to which additional public benefit is achieved;
- The extent to which there is increased risk to the City's original investment.

The City will use the following guidelines when processing requests for subordination of homebuyer assistance loans:

- The City will not subordinate City-funded loans to any additional loans secured by the property.
- The City will subordinate City loans, at the City's option, to refinance existing debt secured by the property provided:
  - The homeowner retains a minimum of three percent equity in the home;
  - The refinancing reduces or maintains the total monthly payment for debt service;
  - The homeowner receives no cash back out of the refinance except for payment of emergency medical expenses of family members; the cash back is used to make property health and safety improvements, deferred maintenance repairs or energy efficiency upgrades that reduce monthly expenditures for utilities for the residence;
  - The homebuyer must provide updated personal financial information and the refinancing lender must provide information about the proposed new loan, including estimates of property value.

The City will require the following information to accompany a subordination request:

- A complete and thorough description of the proposed refinance.
- A description of the organization's financial capacity and how this proposal will affect that.

- A description of the project’s financial capacity and the implications of this proposal.
- Proposed new operating budget and a development budget with cost estimates, if applicable.
- Current status of operating and replacement reserves.
- Justification for the proposal based upon the criteria stated above including how the public benefit will be achieved.
- Additional information may be required based upon staff review.

### SECTION 307. USE OF CITY-FUNDED PROJECTS AS SECURITY

Borrowers may use City-funded projects as security for financing other low-income housing projects if borrowers receive advance written approval from the City. The City may give such approval if the borrower demonstrates that using a City-funded project as security for financing another project will achieve benefits for the City and not jeopardize the viability of the City-funded projects.

### SECTION 308. CONDUIT FINANCING

To take advantage of opportunities to respond to requirements of particular projects, the City may provide City funds to a project indirectly, for example by a loan to a borrower that then re-lends the funds to a project owner or lessee. Such financing may include, without limitation, acquisition of tax-exempt bonds from a conduit financing agency where the proceeds are used for an eligible project. In general, the project owner or lessee in such cases must agree to the City’s regulatory terms and must provide a deed of trust for the benefit of the City or assigned to the City.

## CHAPTER 4 - APPLICATIONS AND CONTRACT MANAGEMENT

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### SECTION 401. NOTICE OF FUNDS AVAILABLE

Once per year or as funds are available, the City will issue a Notice of Funds Available (NOFA) for the Production and Preservation of Homes and Homebuyer Programs. The NOFA will provide application requirements, details on specific fund sources available, application forms, and deadlines.

### SECTION 402. DIRECT ALLOCATION OF FUNDS

The City may directly allocate funds to programs or activities:

- that provide rehabilitation and/or weatherization of owner-occupied homes for low-income owners,
- that provide emergency repair for very low-income rental housing and shelters, and
- that provide housing services to very low-income persons consistent with the City's Consolidated Plan, Plan to End Homelessness and Housing Levy Administrative and Financial Plan

### SECTION 403. APPLICATIONS

Minor deficiencies and clarifications may be corrected during the review process. Incomplete applications will be withdrawn from competition. The City will identify required application components in the funding NOFA.

### SECTION 404. APPLICATION REVIEW

Funding applications are reviewed and evaluated in detail by Planning and Community Development staff based on the requirements published in the NOFA. PCD staff works closely with the other public funders that have been requested to fund each project. The public funders collaborate on proposal evaluations and financing strategies that meet the requirements of each fund source while maximizing the number of affordable housing units that can be produced and/or preserved each funding round.

When all projects have been evaluated, staff makes funding recommendations in the following order:

1. Community Development Advisory Board (CDAB). CDAB will review the merits of the proposed projects, whether the project meets the priorities, goals and strategies of the City's Consolidated Plan, this A & F Plan and the NOFA, and the overall mix of projects funded by the City.

2. Loan Review Board. This Board serves as advisors with expertise in affordable housing financing. The Loan Review Board will review the financing proposed for the projects, including the capital funds and operating budget. The Loan Review Board will review the funding terms requested, and determine whether they are reasonable and necessary to complete the project.
3. Mayor. The Mayor will consider the recommendations of CDAB and the Loan Review Board, award projects for funding, and enter or authorize contracts or agreements to be executed as needed. Results are reported to the City Council, Community Development Advisory Board and made public.

#### SECTION 405. FUND RESERVATION

The Planning and Community Development Director Reserves funds for each project selected by the Mayor after the applicant provides information about fund source requirements; funding levels; and conditions that must be met prior to closing. Fund reservations are not binding on the City until contract documents are negotiated and signed by both the Mayor and the owner.

After fund reservations are announced, the Director may reduce or revoke funding to any project based on failure to meet funding conditions; decrease in costs from the preliminary cost estimate submitted in the application; failure of the applicant to obtain other funding; noncompliance by the applicant with City policies; determination of inaccuracies in the information submitted; increased costs or other factors affecting feasibility; results of environmental or other reviews; or failure to the applicant to agree to loan conditions. If a project continues to be eligible for City funding throughout the development process, the City will take into account, in considering any reduction in a funding award, whether it would eliminate the project's ability to utilize another critical funding source. The Mayor may also increase funds to a project after initial funding decisions are made if reasonably necessary to assure success of the project or maximum public benefit, based on new information not available at the time of the initial decision.

#### SECTION 406. CONTRACT NEGOTIATIONS

Once funds have been reserved, Planning and Community Development staff will contact the successful applicant to discuss the award terms, use of Housing Levy and/or other federal funds, any identified conditions or documentation needed, and the contracting timeframe. Several other steps may be needed at this stage, including but not limited to:

- The repayment terms will be clarified and agreed upon.
- Communication with other funding sources to gain assurance that all other funders are committed and loan conditions met.
- Communication to direct the applicant to investigate prevailing wage and apprenticeship requirements.

- Allowable costs incurred prior to the execution of a contract may be reimbursed when the applicant makes a specific request and prior approval is granted by the City. Costs that might be reimbursed include architectural and engineering and other professional services incurred within 24 months prior to commitment of funds from the City.

#### SECTION 407. CONTRACTS AND LOAN/GRANT DOCUMENTS

When pre-contract conditions are satisfied, the City will draft a contract for review. Contracts are drafted based on priorities including but not limited to closing dates, project readiness, and availability of City staff.

Contracts and financial documents are comprised of both specific and general terms and conditions. Some terms and conditions are not negotiable, as set forth in this document or in federal funding requirements as applicable.

Once City staff drafts contract language, the contractor should discuss any proposed changes with the City. Once the City staff and contractor are in agreement, the contract will be routed for execution by the City and Contractor. Documents that may require execution include:

- Funding Agreement - signed by City and Contractor specifying the housing and financial terms and conditions or the City's participation in the project.
- Promissory Note - a note signed by the Contractor promising repayment of the financial assistance as specified.
- Low-income Housing Covenant - a covenant that restricts the use of the property pursuant to the award and Funding Agreement.
- Related legal documents - other documents as needed to secure the City's interest in the property and housing requirements.

#### SECTION 408. TITLE INSURANCE AND LOSS, HAZARD AND LIABILITY INSURANCE

The City requires the Contractor to purchase extended lender's title insurance in the amount of the City financial assistance, and loss, hazard and liability insurance. Evidence of all insurance commitments must be provided to the City prior to execution of contract and loan/grant documents.

The CONTRACTOR shall obtain and maintain the minimum limits of liability insurance set forth below. By requiring such minimum limits, the CITY shall not be deemed to have assessed or assumed the risks which may be applicable to the CONTRACTOR. The CONTRACTOR shall assess its own risks and, if it deems it appropriate and prudent, maintain greater limits. The CITY shall be named as an additional insured on all liability insurance policies, and such policies shall provide coverage required as follows for any and all occurrences arising out of the CONTRACTOR'S performance:

#### A. PERSONAL INJURY

Personal injury (bodily injury), affording limits of liability of \$1,000,000 for each occurrence and \$1,000,000 in the aggregate, for personal injury (bodily injuries) or death suffered or alleged to have been suffered by any person or persons by reason of or in the course of performance under this Agreement, whether occurring by reason of acts or omissions of the CONTRACTOR, or any CONTRACTOR, or both. Such insurance shall be maintained during the term of this Agreement and shall include, if applicable, completed operations and products liability coverage.

#### B. PROPERTY DAMAGE

Property damage, affording limits of liability of \$2,000,000 for each occurrence and \$2,000,000 in the aggregate, covering damage to property suffered or alleged to have been suffered by any person or persons by reason of or in the course of performance under this Agreement, whether occurring by reason of acts or omissions of the CONTRACTOR or any CONTRACTOR, or both. Such insurance shall be maintained during the term of this Agreement and shall include, if applicable, completed operation and product liability coverage.

#### C. TITLE INSURANCE

In cases where real property acts as security for the City's financial assistance in the housing project, the Contractor shall have secured mortgage title insurance in the form and issued by companies satisfactory to the City, in the amount of the City's financial assistance in the project. The title policy shall show no delinquent taxes or assessments affecting the real property or any part thereof on the date of closing except as approved by the City, and include a complete and accurate legal description.

### SECTION 409. SECURITY

#### A. PROMISSORY NOTE AND DEED OF TRUST

City financial assistance provided as a loan, deferred payment loan or recoverable grant shall be evidenced by a Promissory Note and secured by the Deed of Trust in favor of the City. The Deed of Trust shall be recorded in Whatcom County, Washington and the original returned to the CITY after recordation.

#### B. COVENANT RUNNING WITH THE LAND

A Low-Income Housing Covenant shall run with the land and limit the use of the property for the benefit of low-income populations as set forth in a funding agreement for the population as set forth in Section 103, through the Affordability/Commitment Period as set forth in Section 104.

### SECTION 410. CLOSING AND/OR RECORDING

When City funds are used for or during acquisition, the City may draft escrow instructions to identify the priority of document recordation and distribution, direct payment of applicable City

monitoring and loan fees, and direct to ensure the purchase of extended lender's title insurance with the City as the beneficiary. City monitoring fees must be paid as part of closing.

Recorded documents will be forwarded to the City immediately after recordation. The documents will be recorded in the following order: covenant, deed and other documents.

#### SECTION 411. VOUCHERS

If the City's financial assistance is used for acquisition, the preliminary closing statement prepared by the title company or escrow agent may serve as back-up documentation for the voucher. An appraisal may be required if it was not in the City Funding Application. The final closing statement must be submitted to the City when available.

For all other expenses not paid at time of closing, the Contractor will submit payment requests (voucher) to the City with back-up documentation. Monitoring fees, if not paid at closing, must be paid on the first voucher. The City will make a determination whether each invoice or bill is an eligible cost. If an invoice or bill is determined to be an ineligible cost, the amount must be subtracted from the total requested.

Payment can only be made to the organization with which the City has a contractual relationship. Please allow up to 18 business days for payment to be received.

Not less than 10 percent (10%) of the developer fee payable from City funds shall be retained by the City until the applicant has completed the project and complied with all submittal requirements and terms and conditions of the contract.

#### SECTION 412. CONTRACT AMENDMENT

Amendments can be made to executed contracts and are intended to address emergent needs. Amendments must be executed to be valid and amendments to legal documents, e.g. deed or covenant, are sometimes necessary. Authority to execute amendments to contracts resides with the Mayor, or designee.

#### SECTION 413. PROJECT CLOSE-OUT

All required documentation must be in the project file at the completion of development. Documentation required includes, but is not limited to:

- Certificate of Occupancy.
- Management Plan.

- Evergreen Sustainability Development Standard requirements, including architect certifications, implementation plans and all required backup documentation, as applicable.
- Final Project Budget, including matching funds.
- Reserves (operating and replacement).
- Lease (if rental project).
- Tenant Certification Rolls with Income and Demographic Information.

Once the project documentation has been submitted and accepted by the City, the final payment request will be approved.

#### SECTION 414. MANAGEMENT AND OPERATIONS

Good management is critical to the overall success of projects. Project borrowers will be required to submit a management plan to the City for approval prior to project close-out. Management plans should include the following:

1. Occupancy standard (# of persons per unit) that is consistent with Federal, State or City Fair Housing standards.
2. Rent standard (household income and rents) that complies with contract restrictions.
3. A management philosophy that is appropriate for the target population.
4. Affirmative Marketing Plan that complies with Federal, State and City laws and demonstrates outreach to all segments of the community and protected classes. Borrowers serving homeless and diverse populations must demonstrate cultural competency.
5. Roles and Responsibilities of key staff and contracted management.
6. Maintenance Plan including at a minimum:
  - a. a schedule of routine and preventative maintenance (minimum of quarterly visual inspection of units)
  - b. a process for documenting risk of methamphetamine contamination that is carried out regularly and consistently across all units
  - c. a schedule of inspections, taking risk factors into consideration
  - d. the long term maintenance plan
7. A Capital Needs Assessment (CNA) that includes a 20 year schedule of major replacements with a corresponding schedule of replacement reserve account deposits.
8. Budget: Annual projection of income, expenses, capital improvements, and reserve accounts.
9. Operating Policies and Procedures for the following management functions, at a minimum:
  - a. Leasing: referrals, screening criteria, selection, income qualification, and a copy of the lease or program agreement

- b. Rent: Rent collection, deposits, late payments, addressing damage to units, rent increases
  - c. Management of tenant files and records
  - d. Work order and repair process
  - e. Unit turnaround: filling vacancies
  - f. Building security and emergency plan
  - g. Community education and involvement plan for addressing complaints or issues raised by tenants and neighbors about the building or tenants
10. Management plans for special needs housing and housing with support services should also include the following:
- a. Description of service support program to be provided to tenant households including funding commitments and contracts
  - b. Identification of key staff roles and responsible related to service delivery including written agreements that describe relationships with other agencies
  - c. Involvement of tenants in project governance and house rules
  - d. Description of performance or outcome measures

#### SECTION 415. MAINTAIN PROPERTY

The Contractor must agree at all times to maintain the Property or cause it to be maintained in such condition and repair that the City's security will be adequately protected. The City will review the Maintenance Plan referenced in Section 414, and include monitoring for its implementation in period site visit inspections.

#### SECTION 416. TENANT INCOME AND RENT REQUIREMENTS

Housing units funded by the City are restricted to households whose income does not exceed 80% of median income. In most cases, rental housing units are restricted to households with income up to 30%, 50%, or 60% of median income. Tenants must be income qualified prior to move in or prior to City funding for acquisition of occupied units. A maximum restricted rent is established for each housing unit, no higher than Affordable Rent for the income eligibility category and based on the number of bedrooms. Where an existing, occupied project is acquired or rehabilitated with City funds, the City may waive the unit affordability restrictions for existing over-income tenants for up to two years of the date of the agreement between the City and the borrower. However, the City may require as a funding condition that units occupied by such tenants will be rent-regulated under a City Regulatory Agreement when occupancy changes. In such cases, the regulatory term would be established for a fifty- two year period. After the end of the initial two-year period, over-income tenants must be relocated.

The City will use the Washington State Housing Finance Commission schedule of maximum rents and income level served for Whatcom County, available on its website at

<http://www.wshfc.org/limits/map.asp>. If the project includes federal funds, then those units must follow HOME or CDBG (as applicable) income and rent restrictions which may differ slightly.

#### SECTION 417. RENT INCREASES

Housing units must be rented to income-qualified households as set forth in the regulatory agreements *and* the rent on the unit must be restricted to ensure affordability. If rent limits rise, the rent may be increased depending on the terms of the lease and/or applicable landlord-tenant law. The City may provide an allowance for a borrower to raise rents above rent limits for projects that have experienced extraordinary expenses so long as the higher rent remains consistent with the applicable affordability restrictions.

Tenants who are income-eligible at the time of their initial occupancy or the time of City funding, whichever is later, are not generally required to be relocated when their incomes exceed the restrictions of their unit. However, such over-income tenants are subject to separate mandatory or optional rent increases, or both, as follows: (1) If a tenant's income surpasses 140% of the maximum income limit for the unit, borrowers must charge the maximum restricted rent for that unit, and (2) If a tenant's income surpasses 65% of median income, the borrower has the option of raising the rent to a level up to 30% of the tenant's income at the following year's income certification, regardless of the maximum restricted rent. Upon unit turnover, rents may be adjusted to the maximum allowable rent based on number of bedrooms and affordability level.

All rent increases are subject to other funder restrictions, and State and local law. If the project includes federal HOME funds, then those units must follow HOME rent restrictions which may differ slightly.

Rental projects must submit to the City for review and approval rents proposed for units subject to the maximum rent limitations outlined in the funding agreement. For units which the tenant is paying utilities and services, the City will review to ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services. The City will review and approve rents at the time of annual report submission.

Projects which have a long-term project based voucher commitment from the Housing Authority may charge the fair market rent as authorized by the PBV agreement, provided that the tenant rents comply with all other provisions of this Section.

If tenant-based rent assistance vouchers are available and can be used for rent in the project, and the agency wishes to charge fair market rent while keeping the tenant rent portion within the income requirements, that may be acceptable provided the units are not federal HOME-funded units. Rental projects must submit information about units assumed to have voucher rent payments with the rent approval request and receive City approval. Rental projects must use any excess operational revenue for operations, maintenance, services, and reserves in the project. In

no instance may an eligible low-income tenant be denied occupancy of an available unit due to the absence of a rental voucher.

**SECTION 418. SPECIAL POPULATIONS**

Borrowers who have committed to serve specific populations and who sustain a loss of services funding that affects service delivery to such populations, shall consult with the CITY concerning alternatives.

## CHAPTER 5 - PROJECT MONITORING AND COMPLIANCE

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### SECTION 501. OVERVIEW

The City's financial interest in the property must be actively managed to ensure that the investments are meeting the intended purposes. Housing Levy funds are specifically mandated to assist low and very low-income households in meeting their basic housing needs. Therefore, the City must ensure that the funds continue to provide appropriate and well-maintained housing for many years, even beyond the life of the Housing Levy.

Monitoring fees provided to the City at the time of are intended to compensate the City for this ongoing responsibility. The owner of the housing needs to also consider this ongoing obligation and include the costs in the operating pro forma.

In monitoring projects, the City's intention is to prevent potential compliance issues by working proactively with organizations, while ensuring that projects are providing safe and affordable housing to City residents that are in need of assistance.

Monitoring of projects consists of both desk monitoring and on-site monitoring. Desk monitoring primarily consists of reviewing annual reports, audited financial information, and tracking payment history.

On-site monitoring includes inspection of project and tenant files and property condition. The frequency of on-site visits depends on the funding source and the City's assessment of risk based on project and/or agency past performance to ensure that the City's financial assistance requirements are met. Coordination between public funders will occur, which may include sharing annual report information and on-site monitoring duties and reports.

Contractors may be deemed out of compliance with the terms and conditions of their funding. The City will assess the seriousness of the compliance issue and determine an appropriate course of action. Providing technical assistance, creating a workout strategy, or in the worst case, foreclosure, are tools available to the City when working with contractors on compliance issues.

### SECTION 502. ANNUAL REPORTS

Borrowers (rental only) must report annually on the status of their projects each year on a date coordinated with other public funders, such as the Housing Trust Fund and Washington State Housing Finance Commission. The annual reporting period is for the calendar year beginning January 1<sup>st</sup> and ending on December 31<sup>st</sup>. Failure to submit an Annual Report will result in the contractor being out of compliance with the terms and conditions of their funding, and may

result in a project being prioritized for an onsite inspection. Any project with ten or more HOME units will require an annual financial review. The purpose of this review is to reduce any significant risk to the city's affordable housing portfolio and to work to support continued ability of the agency, organization or company to provide quality affordable housing.

Rental projects must submit to the City for review and approval the proposed lease, and rents proposed for units subject to the maximum rent limitations outlined in the funding agreement. For units which the tenant is paying utilities and services, the City will review to ensure that the rents do not exceed the maximum rent minus the monthly allowances for utilities and services.

### SECTION 503. MONITORING HOMEBUYER UNITS

Housing Levy funds used to assist in buying homes for owner-occupied households require that the home be used as their principal residence. This requirement must be stipulated in the financial documents, deed restriction or covenant.

The City's approach to monitoring homebuyer units depends on the project that was funded. If the City provided funds to an organization to assist in the development of homebuyer units, the City may impose an annual reporting requirement on the organization. If the funds are provided from the City directly to the homebuyer, then the City may require annual reports from the homebuyer, plus monitoring of the property.

The key requirements of monitoring homebuyer units include:

- Ensure that units remain owner-occupied.
- Ensure that property is maintained in good condition and meets minimum property standards.
- Ensure that when the home sells and affordability continues, that the unit is marketed in accordance with the City's affirmative marketing policy.
- Ensure that when the home sells and affordability covenant remains in place, that the purchaser meets the affordability requirements of the covenant.
- Ensure that if the home sells to a non-qualified low-income buyer, that the loan and any deferred interest and/or appreciation is repaid to the City pursuant to the financial terms for the project.

### SECTION 504. MONITORING REPORT

The CITY will provide a performance letter periodically to all borrowers specific to their projects that have at least one full year of operation. The performance letter will summarize the City's review of compliance and performance in the areas described above, and identify any findings or concerns that require action by the borrower, including a timeline for response. Borrowers are expected to respond and resolve outstanding issues in order to maintain good standing on their

City loans. Failure to satisfy the requirements outlined in the performance letter may result in a determination by the Planning and Community Development Director that the borrower is not in good standing and affect future City funding awards.

#### SECTION 505. WORKOUTS

The City will work to proactively address problems arising with housing contracts after project completion. The City acknowledges, given the long-term contract relationship and the changing nature of market conditions, that adjustments to contract terms and conditions may be needed. The City will work with contractors to address these issues.

##### **A. SALE OF PROPERTY**

Under certain circumstances the sale of property on the open market may be approved and any obligation for providing affordable housing at the site would be released. Repayment will be based on contract terms and conditions and may include shared appreciation and/or pre-payment penalties.

##### **B. LOAN RESTRUCTURING**

Under certain circumstances, projects may need a change in award terms to reduce their financial burden. These changes may be brought about by changes in overall market conditions, changes in target population and decrease in available subsidies.

Contractors will need to prove financial hardship related to current loan terms before amendments would be approved. Detailed information regarding projects financial performance, status of operating and replacement reserves, organizational financial capacity, target population and market changes, and operating pro forma demonstrating capacity to meet proposed terms.

#### SECTION 506. FORECLOSURE

After failing to achieve voluntary compliance and workout options, it may be necessary for the City to foreclose on an organization's property to represent the City's ultimate responsibility under the Housing Levy or other federal funds awarded by the City. Foreclosure is a legal process, which will be conducted by the City Attorney's Office at the direction of the Mayor and City Council.