

City and County of San Francisco
Mayor’s Office of Housing and Community
Development
Ground Lease Policy
Effective Date: March 3, 2023

This MOHCD Ground Lease Policy applies to all developments on City-owned land and/or seeking City funding for new construction of affordable housing, including recapitalization of projects with existing MOHCD ground leases. Sponsors are advised to include these assumptions into their development and operating budgets.

A. POLICY IMPLEMENTATION

This policy applies to any new construction development or site that has an existing MOHCD ground lease that has not received its gap financing commitment from MOHCD by the effective date of the policy.

B. INTENT

The intent of the Ground Lease is to ensure the long-term affordability and viability of housing funded by the City and/or developed on City-owned land.

C. GROUND LEASE KEY TERMS

Term	Typically 75 years, with a 24-year option to extend. Maximum 99 years.
Annual Rent	Annual Rent is equal to 10% of appraised Fair Market Value and is comprised of Base Rent and Residual Rent. Annual Rent shall be re-determined on the fifteenth anniversary of the date of the First Lease Payment Year and every fifteen (15) years thereafter (“Annual Rent Re-Set”) and shall be equal to ten percent (10%) of the appraised unrestricted value (Fair Market Value) of the Site as determined by an MAI appraiser selected by the sponsor and at their sole cost.
Base Rent	\$15,000. Base Rent is must-pay operating expense, though owner may request deferral of payment upon demonstration of insufficient cash flow to pay. MOHCD may allow lower Base Rent if all units are supportive housing or special needs and are supported with City operating subsidy. Every 15 years, concurrent with Annual Rent Re-Set, Base Rent to increase by \$5,000.
Residual Rent	Residual Rent and MOHCD loan repayments shall, in the aggregate, not exceed 2/3 of Residual Receipts. Unpaid Residual Rent shall accrue, unless waived by MOHCD for project feasibility purposes.

Surplus Cash/Residual Receipts	See Residual Receipts Policy .
Incentive Management Fee	As set forth in the Residual Receipts Policy, up to one-third (1/3) of the Residual Receipts is available to the tenant (project sponsor) as an incentive management fee.
Affordability Restrictions	Restrictions on maximum income eligibility and maximum rents for residential tenants will be set forth in a Declaration of Restrictions recorded against the project sponsor's leasehold estate. Project sponsors are solely responsible for complying with all affordability restrictions recorded against the leasehold estate. In the event there are multiple affordability restrictions, the project sponsor is responsible for ensuring compliance with each affordability restriction by applying the lower of: (1) MOHCD's maximum income and maximum rent schedules published annually, as described in the MOHCD Declaration of Restrictions, or (2) the maximum income and rent schedules set by another government agency providing funding for the project. In general, residential rents and income eligibility shall not exceed an average of 60% MOHCD AMI (defined by MOHCD), for appropriately sized households, across all units, unless specifically approved by MOHCD. In the event of a default or loss of operating subsidies, MOHCD may approve maximum income and maximum rents to increase up to 60% AMI as defined by TCAC to financially stabilize a project.
Assignment/Transfer	Ground Lease cannot be assigned/transferred without prior written approval of MOHCD, except for certain permitted transfers because of foreclosure.
Lender Protections	Ground Lease will have commercially reasonable protections for lenders in the event of a default by the project sponsor.
Improvements	During the term of the Ground Lease, the project sponsor will own fee title to the improvements constructed on the property. At the end of the Ground Lease term, fee title to all the improvements shall vest in the City without further action of any party, without any obligation by the City to pay any compensation therefor to the tenant and without the necessity of a deed from the tenant to the City.
Title	Security for any other loans can only be recorded against the leasehold interest and not fee interest. Without exception, this also applies to any State HCD or federal funding, including HCD and CalHFA.
Reserves and Capital Needs Assessment	Please see Underwriting Guidelines for Reserve Requirements. Must submit a revised Capital Needs Assessment every 5 years.
Modifications	The Ground Lease and any Amendments, including Annual Rent Re-Set, are subject to Board of Supervisors' Approval.

D. LAND TRANSFER TO MOHCD

If a project sponsor is seeking funding from MOHCD (or any other City department) for new construction of affordable housing, the project sponsor will be required to transfer fee title of the property to the City, and the City will ground lease such property back to the project sponsor at finance closing. If MOHCD has provided an acquisition loan for the property or MOHCD's loan (or a portion) will be used to pay off a previous acquisition loan, the purchase price will not exceed the lower of (1) the amount of MOHCD's loan (i.e. acquisition or bridge loan amount), or the appraised value at the time of transfer. Upon transfer, the purchase price will be applied as a credit against the MOHCD loan. In the event the appraised value at the time of transfer is less than the MOHCD loan amount, MOHCD may forgive the remaining balance of the loan if the project can sustain the additional debt. The purchase price cannot be used as credit against any predevelopment loan from MOHCD. If MOHCD is only providing construction and/or permanent financing, MOHCD will pay an agreed upon price not to exceed the appraised value.

E. WAIVER OF THE GROUND LEASE POLICY

The Citywide Affordable Housing Loan Committee may recommend a waiver or modification of any portion of this policy for the purpose of assuring project feasibility. Waiver requests should be sent to the MOHCD Director, care of the assigned Project Manager/Asset Manager.