

**COUNCIL POLICY
CITY OF CHULA VISTA**

**SUBJECT: “Workforce Housing” to serve Moderate
Income Rental Households**

**POLICY
NUMBER**

**EFFECTIVE
DATE**

PAGE

453-03

10/26/2021

1 OF 10

ADOPTED BY: Resolution No. 2021-199

DATED: 10/26/2021

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BACKGROUND

In 2019, a new financing mechanism to provide rental opportunities primarily for moderate income households [those earning between 81-120% of the area median income (“AMI”)] was developed, whereby jurisdictions enter into a Joint Power Authority (“JPA”) Agreement for the issuance of municipal bonds to purchase an apartment complex for conversion into moderate income rental opportunities.

At its September 28, 2021, meeting, the Chula Vista City Council provided guidance to staff that there is a “missing middle” in rental housing stock for moderate income households. City Council directed staff to prepare this “Workforce Housing” policy, in order to evaluate “Workforce Housing” proposals.

PURPOSE

This Policy provides guidance and tools for staff and City Council to standardize review of requests to join a JPA and sets standard/minimum expectations for analyzing and reviewing projects proposed for conversion to “Workforce Housing.”

These guidelines reflect the City’s best tools known at this time to mitigate the risks of “middle income” financing and the associated unknowns, such as, but not limited to bond performance, market value, sustainable revenues for the property’s operation, rent increases, and tax/bond regulations.

This Policy does not create any right of any type for an applicant to have an application reviewed, considered, or approved by the City.

POLICY

I. Workforce Housing Requirements

City Council does hereby set the following limitations and requirements of any proposed Workforce Housing and/or JPA partnership.

A. Limitation on Conversions

1. Joint Power Authority. No JPA Agreement shall be entered into without a project application and project level analysis for City Council consideration. Furthermore, all JPAs must concur with all aspects of this City Council policy and all

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PAGE

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2 OF 10

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Public Benefit Agreements shall incorporate, at a minimum, the items identified below and in Section III of this policy.

2. Project Approvals. The City shall not approve more units than identified as the moderate need in the current Housing Element Regional Housing Needs Assessment (“RHNA”), regardless of whether the aggregate approved units meet RHNA credit requirements per AB787.

B. Eligible Projects.

1. Council Consideration. The City may consider any project meeting the criteria set forth herein. Should Council find that a project does not comply with this Policy and/or the application requirements but provides a unique community benefit and greater balance in rental housing opportunities, findings to modify or waive the applicable criteria may be made.

2. Priority. Projects that provide additional levels of affordability protections, deeper affordability below 80% AMI, rehabilitate older properties, are new construction, meet RHNA credit standards or otherwise provide a greater community benefit shall receive priority for consideration.

3. Existing Covenants. Any project with an existing Affordable Housing Regulatory Agreement at time of application, must meet the following criteria:

- a) To be considered, any existing affordability restrictions must expire within the life of the bond term of the conversion to “Workforce Housing”;
- b) All existing restrictions must be extended to match the bond terms; and
- c) All restrictions must remain at the same or lesser income targets.

C. City Requirements

1. Business License. Property owner or designee (e.g., property or asset management company) shall obtain a City of Chula Vista business license for the property and remain in good standing, such that the property is included in the City’s multi-family inspection program rotation.

2. City Property Tax. No project shall be considered that does not provide the City with payment of an amount equivalent to the otherwise foregone property tax.

**COUNCIL POLICY
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**POLICY
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PAGE

453-03

10/26/2021

3 OF 10

ADOPTED BY: Resolution No. 2021-199

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a) **Host Charges.** Any payment made to the City must, at a minimum, cover costs of foregone ad valorem tax to the City. In addition, should the payment of a Host Charge be found to be an ineligible fee, the JPA must provide an alternative community benefit to satisfaction of the City, such as agreement to lower the income targets and said changes shall be incorporated into the attendant Public Benefit Agreement.

b) **Other Taxing Entities.** At time of policy adoptions, school districts were funded by state fund control and not receiving property tax allotments from the City/County collection. If in the future, any considered project would impact the property tax to a school district, consultation on the impacts would need to be addressed prior to project consideration. A similar examination and consideration should be undertaken for all affected taxing entities as well.

3. **Staff and Consultant Costs.** Applicants shall submit the City application for consideration of any project along with an initial fee to establish a deposit account for City staff time (including City Attorney staff) and any third-party consultants and/or legal counsel during the due diligence stage prior to City Council action. Selection of any third-party consultants shall be at the sole discretion of the City. Third party review may include but is not limited to: underwriting, bond counsel, tax counsel, municipal advisors, and property inspection services.

4. **Ability to Force Sale.** The City shall have the ability to force sale at any point after year 15.

5. **Transfers.** City shall have sole discretion to approve or reject any changes to the:

a) **Ownership,** including changes that are made in whole or in part.

b) **Asset Manager/Project Administrator and Property Manager.** Any request to change the Asset Manager/Project Administrator or Property Manager shall be presented to the City for approval and further, the City may request a transfer of operator for any failure to maintain property or comply with terms of the Public Benefit Agreement.

D. Application Process

1. **Building Affordable Housing.** Any interested parties shall complete and submit the affordable housing application online at the City’s Development Services

**COUNCIL POLICY
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**POLICY
NUMBER**

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DATE**

PAGE

453-03

10/26/2021

4 OF 10

ADOPTED BY: Resolution No. 2021-199

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Department – Housing Division webpage and the “Workforce Housing Checklist.”

2. Review Time. At a minimum, staff shall be provided with at least 90 days to review any application upon receipt of all requested documentation and conduct the proper due diligence.

3. Required Documents. At a minimum, and as identified in the “Workforce Housing Checklist” the following shall be submitted with any application:

- a) Sponsorship Team – Narrative description of the sponsor, bond underwriter, bond counsel, asset manager, property manager, and other involved/interested parties including recent experience on comparable workforce housing developments;
- b) Property Profile - Identify a historical and current profile of the property, including but not limited to:
 - (1) Narrative of property, including but not limited to acreage, number of units & buildings, amenities, year built, and identity of seller;
 - (2) Property sales/market history;
 - (3) Copies of current property tax bills for all project parcels showing the general tax levy, voter-approved indebtedness, and direct assessments;
 - (4) Prior five (5) years of revenues and expenses, by customary line items;
 - (5) Existing debt obligation and capital improvement reserves; and
 - (6) Property inspection with identified needed improvements.
- c) Current Tenancy - Identify the current tenancy and demographics of residents, as well as information on the property, including but not limited to:
 - (1) Current Rent Roll (including term of leases);
 - (2) Property vacancy and turnover rate;
 - (3) Qualification criteria for new tenants; and
 - (4) Income/Employment profile of existing tenants.
- d) Project Affordability - Proposed project level affordability and terms, including, but not limited to:

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**POLICY
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DATE**

PAGE

453-03

10/26/2021

5 OF 10

ADOPTED BY: Resolution No. 2021-199

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- (1) Bond Policy for Middle Income, inclusive of formula or schedule for calculating moderate-income rents are each proposed household income level;
- (2) Draft Public Benefit Agreement as applicable;
- (3) Draft Partnership Agreement between the proposed bond-issuing authority and the Sponsor as Project Administrator/Asset Manager as applicable;
- (4) Draft Project Management Agreement between the Sponsor and the proposed Property Management Company as applicable;
- (5) Bond documents from a recent similar transaction prepared by the Project’s proposed bond underwriter;
- (6) The relevant sections of the Regulatory Agreement between the City and Sponsor as it related to the Project’s housing development;
- (7) Proposed bonds terms, including expected payoff date(s);
- (8) Proposed tenant rents by unit type and AMI level including the assumed percent of household income to be paid in rent, net of landlord-provide utilities, and projected rent savings compared to market rents by unit type and AMI level going forward; and
- (9) Annual rental increase formula and maximums; and
- (10) Any available apartment market studies.

e) Proposed Financial Structure - Proposed fee and debt schedule for the project, including but not limited to:

- (1) Full Pro Forma (A live financial pro forma in Excel reflecting the construction, financing, projected income and expenses, debt, reserves and annual debt coverage ratios of the Project along with notes on all key assumptions);
- (2) Replacement and Operating reserves- provide amount(s) that is being set aside to ensure that the property has sufficient funds to maintain its existing class A condition, including a long-term capital improvement and operations plan over the 30 years that contemplates replacement/renovation of major systems and unit level renovations; and
- (3) Projected net sale proceeds to City at end of a 15-year and 30-

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CITY OF CHULA VISTA**

**SUBJECT: “Workforce Housing” to serve Moderate
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**POLICY
NUMBER**

**EFFECTIVE
DATE**

PAGE

453-03

10/26/2021

6 OF 10

ADOPTED BY: Resolution No. 2021-199

DATED: 10/26/2021

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year period, and basis for estimates; and

(4) Any proposed payment of City property tax and City monitoring fee during the bond financing period.

f) Purchase Information – Identify any other taxing entities impacted by this proposal and current value of the property, including but not limited to:

(1) Current appraisal of the property;

(2) Assessment of other tax impacts to city and other property tax receiving entities; and

(3) Purchase & Sale Agreement and Property Sales Price, including fees.

g) Notification Process – Provide a description or documentation that outlines the notification process and documentation that would be provided to existing and new qualified moderate-income tenants.

h) Staff may request additional documents in its sole discretion.

4. Advisory Recommendation. All Applications should be reviewed by the Housing Advisory Commission prior to Council action.

II. Project Proposal Review

At a minimum staff shall analyze, prepare, and present the following for City Council consideration:

A. Housing Stock Considerations

1. Balanced Communities Policy. Adopted in 1981, the Balanced Communities Policy seeks to provide a variety of housing options throughout the City and in individual neighborhoods through a mix of for-sale and rental products at various income levels. The following shall be analyzed in considering any individual project:

a) Number of moderate-income units approved through this policy or Balanced Communities during the Housing Element cycle;

b) Location of project relative to other market rate rental opportunities;

c) Cumulative impact of workforce housing projects on overall housing stock; and

d) Balance of overall city rental stock by type and neighborhood.

**COUNCIL POLICY
CITY OF CHULA VISTA**

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Income Rental Households**

**POLICY
NUMBER**

**EFFECTIVE
DATE**

PAGE

453-03

10/26/2021

7 OF 10

ADOPTED BY: Resolution No. 2021-199

DATED: 10/26/2021

AMENDED BY:

B. Site Considerations

1. Tenants and Project Specific Demographics. To the greatest extent feasible, the applicant shall provide the following:

- a) Historical/Current vacancy and turnover rate;
- b) Demographics of existing tenants by occupation/income, including estimate of tenant’s who would be eligible for Workforce Housing;
- c) Amenities of specific project; and
- d) Current market rate rent roll in comparison to surrounding rentals.

C. Financial Analysis

1. Third Party. A third party shall be retained to analyze the financial projections, bond fees, property tax revenues, and other financial terms and conditions of the proposal.

III. Public Benefit Agreement

At a minimum a project proposal and Public Benefit Agreement shall include the following items and be reviewed for substantial conformance to said policy by the City Attorney’s Office to provide the City with greater direction in considering such proposal and provide assurances and direction for tenants, staff, and the community in regard to each project. The Public Benefit Agreement shall protect the City’s interest in the proposed JPA and project.

A. Rental Rates.

1. Affordability. The affordable housing cost (rent) shall not exceed the rents published annually on the California Tax Credit Allocation Committee website at <https://www.treasurer.ca.gov/ctcac/compliance.asp>. The City may also consider alternative rental/housing cost standards, in its sole discretion. In the event there are other covenants on the property, the most restrictive rent standard shall apply. Unit mix, location and limit to the proposed applicable household income net of landlord provided utility may also be evaluated.

B. Maintenance Provisions

1. Shall continually maintain the Affordable Units in a condition which, at a minimum, satisfies the Uniform Physical Conditions Standards promulgated by the

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**POLICY
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**EFFECTIVE
DATE**

PAGE

453-03

10/26/2021

8 OF 10

ADOPTED BY: Resolution No. 2021-199

DATED: 10/26/2021

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Department of Housing and Urban Development (24 CFR §5.705). Property shall also be subject to the City’s rotation of property inspections set forth by the City’s Code Enforcement Division.

C. Tenant Protections

1. Noticing. Each tenant shall be provided with a written notice advising them of the deed restrictions and on-going compliance procedures to maintain their eligibility to live in the income and rent restricted units by category.

2. Affirmative Marketing. Project will maintain a waiting list and follow the affirmative marketing procedures in compliance with HCD’s Affirmative Furthering Fair Housing <https://www.hcd.ca.gov/community-development/affh/index.shtml>

3. Section 8. In accordance with SB 329, property manager or representative shall not discriminate in renting units against voucher holders including those receiving rental assistance from any local, federal, state, or non-profit agency.

D. Deed of Trust and Insurance

1. Deed of Trust. The City may require a Deed of Trust be recorded.

2. Title Insurance. Should a Deed be required, Developer shall obtain and pay for an American Land Title Association City’s policy satisfactory to City in the amount of One Hundred Thousand Dollars (\$100,000.00), ensuring that the Deed of Trust is an encumbrance against the Property, subordinate only to any monetary liens to which the Deed of Trust has been subordinated.

E. Failure to Deliver Host Charge

1. Remedies. The City shall have available to it any and all remedies should it not be provided a host charge, including, but not limited to, requiring an increase in the number of affordable units (the City shall determine the amount and type of affordable units to be provided).

F. Reporting Requirements

1. Annual Reporting. Each property owners or authorized representative shall submit an annual compliance report showing the name of the tenant, address, unit

**COUNCIL POLICY
CITY OF CHULA VISTA**

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**POLICY
NUMBER**

**EFFECTIVE
DATE**

PAGE

453-03

10/26/2021

9 OF 10

ADOPTED BY: Resolution No. 2021-199

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AMENDED BY:

number, annual household income and rent. A form can be found at the City’s website at www.chulavistaca.gov/housing. Reporting requirements and associated monitoring fees may be added to the Public Benefit Agreement.

G. Forcing of Sale

1. The City shall have the right to require the sale of the property (“Right of Sale”) beginning year fifteen (15) and continuing until the City waives its right in writing to forgo said sale. The City may require sale of the property to an affordable housing developer of its choosing or to the City. The Right of Sale, including minimum sales price, shall be on terms acceptable to the City. The minimum sale price shall include repayment of suspended property taxes to the City and other affected taxing entities.

2. Tenants. Any purchase contract shall include a notification process, anti-displacement strategies, and relocation assistance for tenants to the satisfaction of the City.

H. City interest in Project/Property to be protected.

1. The City’s interest in the Property/Project shall be protected and may require, at a minimum, terms regarding revenue to debt ratios, encumbrances on property as debt instrument collateral, title insurance, foreclosure provisions, care/maintenance of property requirements, and indemnification, defense, and hold harmless clauses in favor of the City. City Staff (including the City Attorney’s Office) may add additional terms as they determine necessary.

IV. Revenues to City of Chula Vista

All projects qualifying under this policy and proceeds associated with the project received by the City may be used, as follows:

A. “Host City Charge”. All annual charges shall be issued to the General Fund.

B. Monitoring Fees. All annual fees associated with the monitoring of units shall be used for monitoring purposes.

C. Sale Proceeds. All proceeds collected on sale shall be distributed at the discretion of the City in the following order:

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CITY OF CHULA VISTA**

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Income Rental Households**

**POLICY
NUMBER**

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PAGE

453-03

10/26/2021

10 OF 10

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1. Foregone Property Tax. The City at its sole discretion may use funds received to backfill any foregone property tax by taxing entities, including City.
2. Affordable Housing. A minimum of 50% of all proceeds may be used towards the production and preservation housing within Chula Vista, including but not limited to:
 - a) Construction of new affordable housing;
 - b) Conversion of existing housing to affordable uses and/or extension of covenants for preservation;
 - c) Providing homeownership assistance opportunities, with a priority to current and prior tenants of the project; and/or
 - d) Costs associated with conversion of a rental project into condominiums to provide for-sale products to moderate income qualifying households.
3. Economic Development. The remaining 50% may be used for job enhancing activities, including but not limited to:
 - a) Support job creation;
 - b) Support in development of the university site; and/or
 - c) Small business development and preservation.

V. Continuous Review of Policy and additional City Manager authority

Monitoring of the “Workforce Housing” policy shall be continuous to ensure compliance with state requirements and financing mechanisms. The City shall closely monitor legislation related to the RHNA, and update the policy as needed to ensure the City is complying and receiving credit towards Housing Element goals to the greatest extent possible. The City Manager or their designee may impose additional requirements for each project as the City Manager or their designee, in their sole discretion, determine necessary to protect and advance the City’s interests and to implement this policy.

V. Effective Date

This policy shall take effect immediately upon City Council adoption.