



## Measure A1 Implementation Policies Homeowner Housing Development Fund

Adopted on November 7, 2017

On June 28, 2016, the Alameda County Board of Supervisors placed Measure A1 on the November ballot for \$580 million in general obligation bonds designated for affordable housing, and adopted a program summary outlining basic parameters of programs to be funded. The residents of Alameda County voted to support the Measure A1 Bond by 73% in favor on November 8, 2016. Alameda County's Housing and Community Development Department (HCD) is implementing the programs under the Bond.

Of the Bond's five programs, one is intended to increase the long-term affordable homeownership housing inventory in Alameda County. Detailed implementation policies have been developed to guide the use of the funds allocated to the Homeowner Housing Development Fund.

### Adopted Program Summary Framework

When the Alameda County Board of Supervisors placed Measure A1 on the ballot, it also adopted a program summary which framed each of the programs to be funded by the Bond. For the Homeowner Housing Development Program, this included:

1. To assist in the development and long-term affordability of homeownership housing for low-income first-time homebuyer households (at a maximum of 80% of Area Median Income).
2. Funds will be made available to developers of homeownership housing to help construct or acquire and rehabilitate homes for sale to low-income qualified households, with the intent that the funds remain with the housing units as subsidy for the low-income first-time homebuyers.
3. Homeownership Development funds will be available for County-wide geographic distribution with no regional allocations.

The adopted Program Summary provides the overarching programmatic framework. These implementation policies, once adopted by the Board, will provide more detail for how the program will operate while still providing flexibility to implement the programs. In addition, HCD will continue to use its existing Administrative Loan Terms (see Exhibit A) and detailed

Housing Development Policies and Procedures, as applicable to Bond programs (see <http://www.acgov.org/cda/hcd/rhd/requirements.htm> ) for specific project requirements.

It is anticipated that these initial Implementation Policies will evolve over time. HCD will track and report on implementation on an annual basis, including recommendations for any needed modifications to policies to ensure achievement of Measure A1 goals.

## **POLICIES FOR HOMEOWNER HOUSING DEVELOPMENT FUND PROGRAM**

### **A. Income Levels and First Time Homebuyer Status**

1. Project funds will serve households with a maximum income of 80% of Area Median Income (AMI).
2. Sale of homes will be restricted to “First Time Homebuyers.”

### **Eligible Homebuyer Criteria**

3. “First Time Homebuyer” is as defined by the Internal Revenue Service (IRS) or as defined by another funding source in a proposed project, as approved by the Housing Director to maximize leveraging of Measure A1 funds.
4. Unit must be the first-time homebuyer’s primary residence.
5. Homeownership and financial counseling will be mandatory for homebuyers.

### **Homebuyer Selection Criteria**

6. Affirmative Fair Housing Marketing Plans: HCD will require a Fair Marketing Plan for each project to ensure that county resident and workforce populations will be aware of the housing opportunities to the greatest extent possible and that the sale of the project units will be conducted in such a manner as to provide fair and equal access under the law.
  - a. Affirmative Fair Marketing Plans will be reviewed and evaluated by HCD.
  - b. The Marketing Plan must include proactive notification of sales opportunities to a wide array of organizations, including but not limited to Eden I&R’s 211 system, Realtor and Realtist organizations in Alameda County, all members of the Board of Supervisors, neighborhood and faith-based organizations, community groups, nonprofit organizations and others which sign up on an HCD-established “Housing Opportunities” email list service. The notice will also be posted on HCD’s website.
  - c. The Marketing Plan must include outreach and engagement with neighborhood-based organizations in the neighborhood and city/unincorporated county area in which the housing is located to provide opportunities to avoid displacement in that specific community.

- d. All marketing and outreach materials must be provided in the core languages as specified in each jurisdiction's Language Access Plan.
- e. All marketing and outreach materials will include information on the eligibility and priority criteria for homebuyer selection.
- 7. To the extent allowed by law, Alameda County residents, those displaced from Alameda County, and Alameda County workforce will be given priority.
  - a. The Marketing Plan must include a viable and proactive strategy for securing applications from population groups traditionally underrepresented in homeownership.
  - b. To the greatest extent feasible, the developer and its agents must use screening tools that screen these populations into rather than out of the purchase process.
  - c. Selection of potential homebuyers from eligible applicants must occur through a lottery or other process which ensures fair access.
- 8. Should a core application or single point of entry be created for affordable housing opportunities, all projects funded by Measure A1 may be required to utilize the system.

**B. Project Selection Criteria:**

- 1. Projects must have units restricted to first-time homebuyers at or below 80% of AMI and provide long-term affordable homeownership housing.
- 2. Developer must have site control at time of application, unless the project is a scattered-site home acquisition and rehabilitation proposal.
- 3. Mixed-income projects including homes at moderate and/or market rate are eligible, but only the units at or below 80% AMI will receive Measure A1 funding.
- 4. GreenPoint Rating: Projects will be required to meet the minimum scores in each category in each GreenPoint Checklist section.
- 5. Where applicable, HCD will use its existing Administrative Loan Terms (see Attachment A) and detailed Housing Development Policies and Procedures for overall requirements. These policies for Measure A1 funding will take precedence in the instance of any conflicts.
- 6. Developer must demonstrate market demand for the specific project at its specific location.
- 7. Developer must demonstrate previous success with homebuyers at the 80% or below Area Median Income level.
- 8. Rating Criteria shall include:
  - a. Proximity to employment centers or public transit.
  - b. Financial feasibility and cost reasonableness.
  - c. Access to neighborhood services.

C. **Eligible Types of Projects:**

1. New construction
2. Acquisition & rehabilitation
3. Projects must meet all Measure A1 policies and requirements for this program.
4. Land Trust/long term ground lease ownership housing projects are permitted.
5. Eligible acquisition and rehabilitation projects may include “naturally occurring affordable housing” (e.g. a multi-family building in which the majority of residents meet the income requirements and choose to become homeowners, thereby converting the property from rental to ownership) or scattered site single family units that are purchased, rehabilitated, and resold to income-qualified residents.
6. Projects that will permanently displace current low- or moderate-income residents are ineligible for Measure A1 funding.

D. **Eligible Uses of the Funds**

1. Uses of funds will be flexible, within the parameters of eligibility for use of general obligation bond proceeds, including acquisition, development, and construction.
2. Acquisition of land is eligible, so long as a project is developed in a reasonable amount of time. “Reasonable” is defined as starting construction within three years after acquisition. This may be modified at the Housing Director’s discretion, so long as the project is making satisfactory progress towards milestones. Repayment of acquisition funding would be required should a project not start construction within the specified time period.
3. Long-term land banking will not be eligible for funding under the Homeowner Housing Development Fund program. Additional time may be granted to projects if acceptable progress is being made, and not be considered a “Land Banking” project.
4. Standard soft costs associated with development are eligible.
5. Temporary Relocation Costs are an allowable project cost, as part of the normal costs of development, and subject to approval of Measure A1 Bond Counsel.
6. Initially, 10% of the Homeowner Housing Development Fund shall be reserved to cover the County’s bond issuance and program delivery/administration costs. This percentage may be adjusted and any amounts not needed or projected to be needed for this purpose shall be released back into the Fund.

E. **Form and Term of Development Financing:**

1. Funds for project development will be provided in the form of development loans to developers on a project basis, which will convert to deeds of trust associated with each home when purchased by the homebuyer.

2. Development loans will be evidenced with loan documents provided by the County and secured by a deed of trust recorded against the property. The County will also require recordation of interim affordability restrictions to ensure that the property is used for affordable ownership housing upon completion of the project.
3. Upon sale of individual homes to eligible homebuyers, the development loan will be repaid or the homebuyers will assume a pro rata portion of the loan with new security documents. The portion of the loan assignable to homeowners will be reduced from the developer loan (reassigned to the homebuyer). In any event, an individual homebuyer Resale Restriction and Affordability Agreement will be recorded against the home to protect the County's investment.

F. **Leverage Requirements**

HCD seeks to leverage other sources of affordable housing financing. Additional points may be awarded in competitive processes to incentivize the leveraging of Measure A1 funds in applications for funding.

G. **Amount of Measure A1 Investment per Project/Unit**

1. Maximize leverage and produce the largest number of units possible.
2. Select feasible projects.
3. Fund projects at a level to ensure viability for the life of the resale restriction.
4. The maximum amount of Measure A1 Homeowner Housing Development funds available to a project on a per unit basis will be based on the reasonable and comparable development costs for similar projects (as determined by County Housing Director and approved by the Board of Supervisors) less the first mortgage loan and required down payment and any additional leverage. See Attachment B as an example.
5. The Measure A1 funds must fill a funding gap and not supplant other funding.

H. **Maximum Sales Price Calculation**

1. Sale prices will be established at a level 10% below the maximum household income limit. For example, housing units targeted to households with incomes at or below 80% AMI will have a sale price affordable to a household with an income at 70% AMI. The sale price will not adjust based on specific homebuyer household income.
2. When setting the sale price, household size will be assumed at one person per bedroom plus one person. For example, the maximum sale price of a two-bedroom home will be calculated based on the applicable income level for a household size of three.
3. The maximum Housing Cost to Income ratio will be 35%, unless restricted by other sources. "Housing Cost" includes mortgage principal and interest, property

taxes, insurance, estimated utilities, minimum maintenance reserve, and (if required) mortgage insurance (PMI) and homeowner association fees.

4. The minimum homebuyer down payment required will be 3% of the restricted sale price.
5. For sweat equity programs, the portion of down payment paid by the homebuyer can be adjusted lower than 3% as approved by the Housing Director, in recognition of the value of sweat equity provided by the homebuyer household.
6. HCD will establish an occupancy standard regarding minimum household size at initial home purchase, for example, a one person household would not eligible to purchase a three bedroom home.

**I. Homebuyer Affordability Terms:**

1. Repayment of Measure A1 Bond funding is deferred with no monthly payments to add to homebuyer cost burden.
2. The loan will be due and payable if or when the home is sold or transferred to an ineligible household.
3. Repayment will be required should the homebuyer no longer use the home as their principal place of residence.
4. The homebuyer's first mortgage must be a fixed rate mortgage with a term no shorter than 30 years.
5. HCD will hold or cause to be held a policy review session with homebuyers before closing to explain the program requirements and to review all legal and disclosure documents relating to the long term ownership of the housing purchased.
6. The affordability term length will be 99 years and will reset at each re-purchase or transfer to a new eligible homebuyer to achieve permanent affordability.
7. The Resale Restriction Agreement may include a Grant of the Right of Repurchase to the County, developer or an assignee.
8. Homeowner's restricted future resale price when sold to a new eligible homebuyer:
  - a. The resale sale price will be calculated utilizing the percent of Area Median Income used to calculate the original sale price (for example 70%) and other factors used to determine the initial sale price in order to maintain affordability over time at the original specified income level.
  - b. Homeowner's receipt of equity upon resale is limited to an amount equal to the restricted resale price plus documented capital improvements, minus any deferred maintenance or repair costs, the first mortgage and any other liens on the property at the time of resale.
9. In the event of a resale where no eligible homebuyer can be found within a reasonable period of time after extensive marketing and outreach, the property

may be sold at market rate with the Housing Director's approval, and all Measure A1 loan funds plus the difference between the actual resale price and the affordable resale price (as calculated in section iii above) will be paid to HCD, to avoid windfall profits, maximize the possibility of permanent affordability, and re-use any repaid funds to create additional affordable housing opportunities.

J. **Layering of Down Payment Assistance Programs with Development Funding:**

1. Allow down payment assistance programs, including CalHFA, State HCD or individual city programs, to be layered with the Homeowner Housing Development Program, unless conflicting requirements render it infeasible.
2. Layering of Measure A1 Downpayment Assistance Loan Program (DALP) funds is permitted, with an emphasis on targeting lower-income educators and first responders who meet the income requirements for the Homeowner Housing Development Program.

K. **Developer Requirements**

1. The County will make funds available to otherwise eligible Tier One developers. See Attachment A for Tier One Developer specifications.
2. Applications must demonstrate current capacity of the development team to accomplish the project.

L. **Contract Administration and Compliance**

1. Post-closing compliance monitoring will be required, including but not limited to annual communication with homeowner and verifying evidence of occupancy as necessary. The County may require this follow up work to be done by the developer, or may carry out the work itself.

M. **Wage Levels and Employment Opportunities**

1. HCD may provide additional points in a Request for Proposals (RFP) for projects that coordinate with, and propose use of, construction training and other employment training and career pathway programs that place Alameda County workers in contracted work on a Measure A1 bond-funded project.
2. The County will provide information to developers and contractors about available resources to establish partnerships with such workforce training and career pathways programs, and will identify ways that the County may support developers and contractors with such efforts.

See Attachment A for Administrative Loan Terms.

## Attachment A

### Alameda County Housing and Community Development Department Administrative Loan Terms

Alameda County Housing and Community Development Department (HCD) maintains a set of Administrative Loan Terms used to implement its Affordable Housing Development Program. These policies are updated periodically, as changes occur in the affordable housing finance field. The key policies outlined below do not represent all requirements of HCD funding. For additional details, please see HCD's Affordable Housing Development Policies and Procedures, applicable annual Request for Proposals document and HCD's Loan Documents.

#### A. Loan Documents:

It is anticipated that regardless of how funds are initially used, the funds will roll into permanent financing secured by long-term debt against the real estate. This debt will be secured by a Deed of Trust and Regulatory Agreement or Resale Restriction Agreement which borrowers must sign documenting HCD's investment and ongoing requirements. HCD's existing affordable housing development program policies as of the date of the contract will govern loan terms and HCD imposed requirements.

1. Contract for funding, approved by the Board of Supervisors
2. Loan Agreement
3. Regulatory Agreement
4. Promissory Note
5. Deed of Trust
6. Subordination Agreement(s) (as applicable)

#### B. Term

See Measure A1 Policies for Homeowner Housing Development Program

#### C. Interest Rate

See Measure A1 Policies for Homeowner Housing Development Program

#### D. Payments

See the Measure A1 Policies for Homeowner Housing Development Program

#### E. Security

Deed of Trust recorded against fee title or leasehold interest.



**F. Regulatory Agreement/Resale Restriction Agreement**

The HCD Regulatory Agreement must be recorded against the fee title interest on the property and in senior lien position to bank loan documents. In leasehold transactions, the Regulatory Agreement/Resale Restriction Agreement must be on the fee title.

**G. Income Restrictions**

See the Measure A1 Policies for Homeowner Housing Development Program

**H. Rent Increases**

Not applicable

**I. 4% MFMR Bond Projects**

Not applicable

**J. Replacement Reserve**

Not applicable

**K. Operating Reserve**

Not applicable

**L. Developer Fees**

10% of total development costs up to a maximum set by Housing Director.

**M. Retention**

\$50,000 of HCD's loan funds must be allocated toward the developer fee and held as a performance retention, to be paid upon completion of construction and delivery of close out items. This amount can be adjusted for smaller projects, at the Housing Director's discretion.

**N. Asset/Partnership Management Fees**

Not applicable

**O. Loan Fees**

HCD may charge a loan closing fee.

**P. Monitoring Fees**

HCD may charge a monitoring fee for each HCD-restricted unit.

**Q. Insurance Minimums**

1. Workers Compensation: to the extent required by law, including Employer's Liability coverage, at least \$1,000,000 each accident
2. Commercial General Liability: \$2,000,000 per occurrence
3. Commercial Automobile Liability: \$1,000,000 per occurrence
4. Builder's Risk/Property: 100% of property replacement value
5. Commercial Crime: covering all officers and employees, for loss of HCD loan proceeds caused by dishonesty
6. Borrower must ensure that any general contractor or subcontractors maintain the insurance in #1-3 in the amount of \$1,000,000 each.
7. Commercial General Liability and Automobile Liability insurance policies must be endorsed to name as an additional insured HCD, and its officers, agents, employees and members of the County Board of Supervisors.
8. These are subject to change based on County Risk Management requirements

**R. Record Retention**

Records related to Alameda County bonds or loans used to fund construction or rehabilitation of low-income housing, including individual homeowner loans and multi-family rental housing developments must be kept for the length of time the property is restricted plus 6 years.

**S. Reports**

1. Quarterly progress reports required during construction and with any invoice.

**T. Change Orders**

For construction period loans, construction change orders are subject to HCD's approval.

**U. Subcontracts**

1. Contractor must submit proof that subcontractors are not debarred prior to construction loan closing.
2. HCD requires competitive bidding for all subcontractors.

**V. Construction Contingency**

1. **New Construction:** 10% required at initial application, but can drop down to 5% remaining after construction bids are known.
2. **Rehab:** 15% construction contingency required.

**W. Jobs/Hiring**

See the Measure A1 Specific Policies for Job/Hiring requirements.

**X. Subordination**

HCD will not accept standstill provisions or enter into a standstill agreement requested by senior lenders that prohibits HCD from exercising remedies during a specified period after a default.

**Y. Developer Criteria**

HCD awards funds to Tier One developers. In order to be considered for funding under the Tier One criteria, a developer must demonstrate experience and capacity to complete the project. Experience includes the successful development and completion of three projects of a similar size and scope by the developer. Capacity include having staff assigned to the project who have worked on similar projects and whose resumes demonstrate their ability to guide the project through all stages of the development process. For developers that do not meet these requirements, a partnership with a Tier One developer is required. Long term ownership entity for rental housing development must include a Tier One developer and its capacity to oversee the asset management of the building over the course of the regulatory agreement. See HCD's policies and procedures for more details.

**Z. HCD's Costs**

Developer (or Project) to pay for required 3<sup>rd</sup> party environmental review (NEPA/CEQA), HCD's legal costs associated with development and execution of project legal documents, wage monitoring associated with the project, and construction management costs associated with overseeing the progress of construction.

These administrative loan requirements are updated regularly in connection with the annual Request for Proposals process, as approved by the Housing Director. HCD's objective is funding affordable housing that is financially viable over the long term loan and regulatory period as well as meets the County's fiduciary responsibilities in relationship to funding sources.

**Attachment B**

**Financing Example**

**A1 Bond Homeownership Development example:**

20-unit project, 100 % affordable at 70% AMI, average size = 3BR

Total Development Cost:	\$10,000,000
Total Development Cost/unit:	\$500,000
Other Grants/Donations:	\$1,000,000
Buyer incomes (example): 70% AMI = \$73,000 average household income (4 person Household)	
Affordable Sale Prices:	\$245,000

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**Hypothetical permanent financing example:**

1 <sup>st</sup> Mortgage from Lender:	\$230,000	(30-year fixed, 5% interest)
Personal Down Payment (3%)	\$15,000	(e.g. combination Cash, gift, or sweat equity)
Other grant/donation liens	\$50,000	(likely recorded 3 <sup>rd</sup> deed)
<u>A1 Bond Gap financing</u>	<u>\$205,000</u>	(Recorded, No-interest Deed of Trust, 99 years)
Total	\$500,000	

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