

RESOLUTION NO. 24-51

Resolution Of The City Council Of The City Emeryville Approving Revised Program Guidelines For The Emeryville First Time Homebuyer Program

WHEREAS, the City of Emeryville's First Time Homebuyer down payment assistance program (the "FTHB Program") provides down payment and closing cost assistance to income eligible households to purchase residential units within the City of Emeryville through low interest, deferred financing; and

WHEREAS, since 1991, the City has issued 561 down payment assistance loans totaling \$19,052,536; and

WHEREAS, only one loan has been issued for down payment assistance since the FTHB Program guidelines were last updated in 2013; and

WHEREAS, market conditions have changed since 2013, and certain existing FTHB Program requirements related to maximum loan amount, interest rate and borrower contribution requirements have made the FTHB Program difficult for borrowers to utilize; and

WHEREAS, the Affordable Housing Bond Administration and Expenditure Plan adopted on March 2, 2021, provides a total of \$1,950,000 in Affordable Housing Fund and Measure C Housing Bond Funds to support a revised FTHB Program; and

WHEREAS, the FTHB Program guidelines must be revised in order to effect these changes and re-launch the FTHB Program; now therefore be it

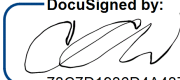
RESOLVED, that the City Council of the City of Emeryville approves revisions to the FTHB Program guidelines as shown in Exhibit A attached hereto, and be it further

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to make modifications to the FTHB Guidelines as needed to effectuate their purpose.

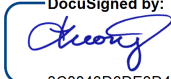
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City Council Meeting | May 7, 2024
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ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, May 7, 2024, by the following vote:

AYES:	<u>4</u>	Mayor Welch, Vice Mayor Mourra and Council Members Bauters, and Kaur
NOES:	<u>1</u>	Council Member Priforce
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

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MAYOR

ATTEST:

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DEPUTY CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY



First Time Home Buyers (FTHB) Program Guidelines Manual

Adopted May 7, 2024



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SECTION 1. INTRODUCTION

Thank you for your interest in the City of Emeryville's First Time Homebuyer (FTHB) Program. This program provides down payment and closing cost assistance to eligible first-time homebuyers in purchasing a home within the city limits of Emeryville. This program manual contains the specific requirements for eligibility and ongoing program compliance for any FTHB loan issued after May 7, 2024. Please review your Deed of Trust and Promissory Note to determine the FTHB requirements associated with any loan issued prior to May 7, 2024 or contact the City. The City of Emeryville will review and update these guidelines from time to time to reflect changes in the market and ensure the program continues to meet the community's needs.

SECTION 2. DEFINITIONS

ALTA Policy: A type of Title Insurance provided by title companies in the American Land Title Association. Protects against everything covered in a CLTA policy, plus additional risks such as easements or encroachments not shown by public records, or conflicting boundary lines and water rights.

Amortizing Loan: A loan where the principal of the loan is paid down over the life of the loan. Fully amortizing payment refers to a periodic loan payment, where if the borrower makes payments according to the loan's amortization schedule, the loan is fully paid off by the end of its set term. If the loan is a fixed-rate loan, each fully amortizing payment is an equal dollar amount. Negative amortization is an increase in the principal balance of a loan caused by making payments that fail to cover the interest due.

Applicant: A Household that has submitted an application for the City of Emeryville's FTHB Programs.

Area Median Income (AMI): The midpoint in the income distribution within a specific geographic area. The area median income adjusted for Household Size is published annually by the California Department of Housing and Community Development.

Arm's Length Transaction: Transaction in which the buyer and seller act independently and with no interest in the other's benefit.

Assets: Items of ownership which can be converted into cash; total resources of a person or business, such as cash, notes and accounts receivable, securities, inventories, goodwill, fixtures,

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machinery, or real estate. See Appendix 1 for the types of Assets that are counted and not counted for the purpose of Homebuyer Program eligibility.

Back-End Ratio: Ratio of the amount of monthly income that will go toward paying debts, post-purchase, for a Homebuyer Program Applicant, at the time their application is submitted.

Below Market Rate (BMR) Homes: A BMR home is priced to be affordable to a Household that is at or below certain designated Income Levels. BMR homes have restrictions recorded against them to ensure they remain affordable for a set period. If they are resold before that time expires, they are sold for an Affordable Price and the time limit is reset for the new owner.

Beneficiary: For loans secured with a Deed of Trust, the beneficiary named in that deed typically refers to the lender.

CalHFA: The California Housing Finance Agency.

Covenants, Conditions and Restrictions (CC&Rs): A document that controls the use, requirements, and restrictions of a property that is part of a Homeowners Association.

City: The City of Emeryville.

City Staff: An employee or designee of the City of Emeryville responsible for actions related to the program or these guidelines.

CLTA Policy: A type of Title Insurance provided by title companies in the California Land Title Association. Protects homeowners from financial loss associated with title fraud or forgery, including recorded claims on the title and unpaid taxes by a previous owner. Offers less coverage than ALTA policies.

Combined Loan to Value (CLTV): The percentage of a property's value plus any outstanding debt on the property that a lender can or may loan to a borrower.

Debt-to-Income Ratio: See Back-End Ratio and Front-End Ratio.

Debt-to-Loan Ratio: The percentage of gross monthly income that goes toward paying for one's monthly housing expense, alimony, child support, car payments and other installment debts, and payments on revolving or open-ended accounts, such as credit cards.

Deed and Note: Shorthand for a Deed of Trust and its accompanying Promissory Note.

Deed in Lieu of Foreclosure: A deed to real property accepted by a lender from a defaulting borrower to avoid the necessity of foreclosure proceedings by the lender.

Deed of Trust: A document used to establish the security for a loan, including for mortgage loans. Typically, uses the property to secure repayment of a loan or other obligation. Once fully executed, notarized, and properly recorded, the Deed of Trust becomes a Lien against the property.

Domestic Partnership: A partnership formally registered with the California Secretary of State. As of January 1, 2020, all couples that are eligible to be married, regardless of sexual orientation or age, may be registered as Domestic Partners.

Down Payment: An initial payment made when something is bought on credit.

Fair Housing: State or federal laws that govern the fair and unbiased treatment of buyers and renters when selling or renting a house.

First Mortgage Loan: the primary lien securing the First Loan on the home which has priority over all other liens or claims on the Residential Unit in the event of default.

First-Time Homebuyer: Individuals that have not owned a residential property during the three-year period before applying for participation in one of the Homebuyer Programs, regardless of whether the individual's interest in such property results in a financial gain, such property is in another state or country, or the member has occupied such property as his or her Primary Residence. Exceptions to this definition include:

- a) An individual who owned a home with a former spouse during their marriage.
- b) An individual who has owned a principal residence that was not permanently affixed to a permanent foundation, according to applicable regulations.
- c) An individual who has owned a property that was not in compliance with state or local building codes, and which cannot be brought into compliance for less than the cost of constructing a permanent structure.

* The First-Time Homebuyer requirement is waived for current City and Emery Unified School District employees.

Front-End Ratio: An individual's monthly Housing Expenses divided by his monthly gross income, at the time their application for one of the Homebuyer Programs is submitted. It is evaluated in conjunction with the back-end ratio.

Gross Household Income: All income, before any deductions are taken from whatever source derived, of all adult Household members (18 years of age and older), whether such income is exempt from federal income tax. Refer to Appendix 1 for a list of income sources and exceptions.

HCD: California Department of Housing and Community Development.

Homebuyer Education: A HUD-approved course designed to provide basic education for First-Time Homebuyers. The date on the completion certificate for the class must be within six months of the date of the close of escrow.

Homeowners Association (HOA): A nonprofit association that manages the common areas of a condominium or planned home development. Homeowners pay a fee to the HOA to maintain areas owned jointly.

Household: All those persons—related or unrelated—who will occupy the home they intend to purchase that is associated with their application to participate in one of the City’s Homebuyer Programs.

Household Income: Combined anticipated gross income for the 12-month period following date of determination of income for all members of the Household who are over 18 years old.

Household Size: Number of persons who will be living in the home that meet the requirements in Section 3.9 Occupancy Limits.

Housing Expenses: Principal and interest on a mortgage loan, including any loan insurance fees, private mortgage insurance, property tax assessments, homeowner insurance, HOA dues, property maintenance and repairs, and a reasonable allowance for utilities.

HUD: United States Department of Housing and Urban Development.

Income: Anticipated gross income for the 12-month period following date of determination of income.

Income Levels: Income categories determined periodically by HCD based on AMI (area median income) and adjusted for actual Household Size. HCD determines AMIs on a county-by-county basis and Emeryville uses the Alameda County AMI. To qualify for a Homebuyer Program, a Household must earn at or below the designated Income Level.

- a) Moderate Income = 101%-120% of AMI
- b) Median Income = 81%-100% of AMI
- c) Low Income = 51%-80% of AMI

d) Very Low Income = 50% or less of AMI

Joint Tenancy: The holding of an estate or property jointly by two or more parties, the share of each passing to the other or others on death.

Lien: A legal hold or claim to keep possession of property belonging to another person until a debt owed by that person is discharged.

Loan Subordination: See Subordination and Subordination Agreement.

Live/Work Unit: A single unit (e.g., studio, loft, one bedroom) consisting of both commercial space or office and a residential component that is occupied by the same resident.

Loan to Value: The percentage of a property's value that a lender can or may loan to a borrower.

Maximum Household Income: The maximum combined gross Income that a Household can have, adjusted for Household Size, to be able to qualify for program participation, according to the designated Income Level of the First-Time Homebuyer Loan Program Guidelines.

Monitoring: See Owner Occupancy Monitoring.

Occupancy Limits: Minimum household occupancy is one person or the number of bedrooms, whichever is greater. Maximum household occupancy of a home is determined as follows: each bedroom may have a maximum of two people; one additional person may live outside of a bedroom within the home. The Household Occupancy Limits are applicable if the standards do not violate Fair Housing requirements and comply with any applicable state and federal laws and regulations. See Guidelines in Section 3.9.

Owner Occupancy Monitoring: Program participants are periodically monitored to ensure compliance with the requirement that they occupy the home as their primary place of residence for at least ten months of the calendar year. Upon request, program participants are required to submit a signed and notarized affidavit and Valid Third-Party Documentation such as, but not limited to, a property tax statement or utility bill.

Owner-Occupancy Waiver: A temporary release of the owner occupancy requirement granted by the Director of Economic Development and Housing or their designee in limited situations. See Guidelines in Section 7.

Primary Residence: Program participants must occupy their home as their primary residence, defined as living in the home a minimum of ten months out of the year.

Promissory Note: A written promise to pay a specified sum of money to a designated person or to his or her order, or to the bearer of the note, at a fixed time or on demand. The document executed by loan recipients and dated concurrently with the Deed of Trust securing the Promissory Note. The Promissory Note establishes the principal loan balance and indebtedness.

Qualifying Household: A Household that meets the requirements listed in Section 3: Applicant Eligibility.

Reasonable Accommodation: Accommodations in program rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person, or a Household with a disabled member, equal opportunity to apply for, as would be available to non-disabled persons or Households in similar circumstances. The requested accommodation must be reasonable, must be reasonably related to the disability of the Household member, and must be necessary to provide the Household with equal access to housing.

Refinance: Getting a new mortgage to replace the original is called refinancing. Refinancing is done to allow a borrower to obtain a better interest term and rate. The first loan is paid off, allowing the second loan to be created. See also Subordination and Subordination Agreement.

Sale: Any voluntary or involuntary sale, conveyance, assignment, or Transfer of ownership of or any interest in the property, including a fee simple interest, Tenancy in Common, Joint Tenancy, community property, tenancy by the entireties, life estate, or other limited estate, leasehold interest or any rental of the residence, or any interest evidenced by a land contract.

Shared Appreciation: Often First-Time Homebuyer loan agreements include a shared appreciation component. In such a loan, when the borrower pays back the loan, they also pay a certain percentage of the increase in value (the appreciation) of the property, between the date of purchase and the date of the loan payoff.

Short Sale: A Sale of real estate in which the proceeds from selling the property will fall short of the balance of debts secured by Liens against the property and the property owner cannot afford to repay the Liens' full amounts, whereby the Lien holders agree to release their Lien on the real estate and accept less than the amount owed on the debt. Any unpaid balance owed to the creditors is known as a deficiency.

Subordination: In banking and finance, refers to the order of priorities in claims for ownership or interest in various Assets, such as real property. A first mortgage Lien is given higher priority than a second mortgage Lien and will be paid first. A Lien that is recorded second has second

priority and will be paid second, and so forth. In the case of a Short Sale or foreclosure, the order of the Liens is an important issue.

Subordination Agreement: A document which is typically required by a lender if a borrower wants to Refinance their first mortgage and they have other Liens or mortgages on title. In a subordination agreement, a prior Lienholder agrees that its Lien will be subordinate (junior) to a subsequently recorded Lien.

Tenancy in Common: A type of shared ownership of property, where each owner owns a share of the property. Unlike in a Joint Tenancy, these shares can be of unequal size, and can be freely Transferred to other owners both during life and via a will.

Title: A legal document evidencing a person's right to or ownership of a property.

Title Insurance: Insurance that protects the lender (lender's policy) or the buyer (owner's policy) against loss arising from disputes over ownership of a property. See also CLTA Policy and ALTA Policy.

Total Household Income: All Gross Household Income and Assets received.

Transfer: See Sale.

Trustee: Holder of legal Title to a property. Typically, a title company processing an escrow will be named as the trustee in the deed(s). The trustee holds the Title as security for a loan (debt) between a borrower and lender. The equitable Title remains with the borrower.

Trustor: A trustor named in a Deed of Trust is synonymous with a borrower.

Valid Third-Party Documentation: Documents issued directly by a public agency, private utility company, taxing entity, creditor, financial institution, school, employer, business, landlord/property manager or certified public accountant on such entity's own letterhead, verifying one or more eligibility criteria of any Applicant, co-Applicant, or their dependents. Such documentation may be verified by Homebuyer Program staff through direct contact with such agency/issuer by phone, email, or written inquiry to verify accuracy of document's contents.

SECTION 3. APPLICANT ELIGIBILITY

This Section describes the requirements an Applicant must fulfill to qualify for the FTHB Program. These requirements include limitations on household income, eligible home types, and occupancy limits among others. Other Applicant requirements include meeting specified ratios between housing expense and household income and debt and household income.

SECTION 3.1 Household Income Requirements

The total household income can be no greater than 120% of area median income, adjusted by household size, as adopted annually by the City of Emeryville. The City will apply the most recently published income table (named Affordable Housing Table) that is available when determining the Household Income eligibility.

Calculating total Household Income is key to determining whether the Applicant(s) is (are) income eligible for a FTHB loan. Total Household Income consists of all sources of income of **ALL** Household members aged 18 or older who will occupy the Property, regardless of dependency or ownership status.

Applicants whose income from employment has declined in the past 6 months must provide evidence verifying that the change was not voluntary – for example that the applicant did not quit a job or choose to reduce hours.

More information regarding household income, including what types of income and assets are considered and not considered, can be found in Appendix 1: Household Income and Assets.

SECTION 3.2 Criteria for Program Eligibility

No individual in the household may have owned a home for past three years *unless* one of the following criteria is met:

- The individual is a single individual or single parent who previously owned a house within the past three years with a previous spouse;
- The individual has owned a principal residence that was not permanently affixed to a foundation, according to applicable regulations;
- The individual who has owned a property that was not in compliance with state or local building codes and which cannot be brought into compliance for less than the cost of constructing a permanent structure;
- The individual is an employee of the City of Emeryville;
- The individual is an employee in the Emery Unified School District; or
- The individual previously owned a house with a domestic partner within the past three years, but the domestic partnership has been terminated. Proof of the establishment as well as the termination of the domestic partnership as defined by the State of California must be presented.

SECTION 3.3 Homebuyer Education

Each household member aged 18 and older who is an Applicant and will appear on the title of the Property must attend 8 hours of HUD certified homebuyer education, through a Homebuyer Education Provider. Homebuyer Education workshops cover topics as: the loan application process, closing costs and escrow fees, recurring housing expenses, refinancing, budgeting, responsibilities of homeownership, home maintenance, and the importance of maintaining good credit. When all required members of an Applicant Household have completed the Homebuyer Education requirement, their Homebuyer Education Provider will issue a Certificate of Completion of Homebuyer Education, which shall be provided to the City at least 48 hours prior to close of escrow. The Certificate of Completion of Homebuyer Education must have been issued within twelve (12) months from the date of application.

SECTION 3.4 Mortgage Pre-Approval

Applicants are encouraged to shop around to find the best Lender that suits their needs but must choose only one Lender in connection with the FTHB loan. Applicants must submit a First Mortgage Loan pre-approval letter as part of their FTHB application submittal. The pre-approval letter must:

- Name all adults aged 18 and older in the Applicant's Household;
- Be dated within one hundred twenty (120) days of the Applicant's application.
- Include a maximum sales price that meets or exceeds the actual sales price of the Property, and a maximum first loan amount, the FTHB loan amount, and any other subordinate loans (if applicable).

SECTION 3.5 Eligible Homes

Eligible homes include single-unit homes, townhomes, condominiums, limited equity coop units, live/work units and co-housing units located in the city limits of Emeryville.

Housing types excluded from the Program are:

- Mobile Homes that are not affixed to a permanent foundation and those built before June 15, 1976;
- Multi-unit properties such as a duplex, triplex or other multi-family property;
- Properties purchased through a non-Arm's Length Transaction, with an identify of interest between the buyer and seller or other parties participating in the sales transaction unless authorized by the City. Approval may be granted by the City on a case-by-case basis and in the City's sole discretion;
- Tenant Occupied Properties, under which any unlawful rental eviction has occurred.

The list above is not comprehensive and is subject to change at any time at the City's discretion. The City reserves the right to identify additionally prohibited housing types.

Applicants purchasing shares at the 45th Street Artists' Cooperative are eligible for an FTHB Loan. Qualification of the FTHB Loan does not guarantee you will be approved by the Emeryville 45th Street Artist Cooperative Board of Directors to purchase shares. Applicants must complete the studio transfer process as outlined by Emeryville 45th Street Artist Cooperative. For more information on purchasing at 45th Street Artist Cooperative, please visit their website at <https://www.emeryvilleartistscoop.org/index.html>.

SECTION 3.6 Owner Occupancy Requirement

Applicant must agree to occupy the Property as their principle place of residence. Everyone on title to the Property and all Household members must occupy the property as their principle place of residence within sixty (60) days of close of escrow. Owner occupancy must be maintained for at least ten (10) months of the calendar year.

SECTION 3.7 50% Value Requirement for Underemployed/Unemployed Borrowers

Underemployed or unemployed borrowers must demonstrate that they have a combination of income and/or assets to purchase at least 50% of the value of the unit. Examples of unacceptable Applicants would be students or others in a very low-income bracket, whose parents or others are providing the capital or income for a substantial portion of the purchase price.

SECTION 3.8 Front-End Ratio and Back-End Ratio Requirements

Applicants must meet the minimum front-end ratio depending on the Applicant's household income relative to the Area Medium Income (AMI). A front-end ratio represents the percentage of housing expenses (i.e., mortgage) to household income. HUD defines households as being cost burdened when they expend more than 30% of their income on housing.

The required front-end ratios for an Applicant are as follows:

- Minimum Front-End Ratio of 28% for households at or below 80% AMI.
- Minimum Front-End Ratio of 30% for households between 81% and 120% AMI.

Applicants must also fall under the maximum back-end ratio based on the Applicant's household income relative to the AMI. The back-end ratio represents the percentage of all debt to household income.

The maximum Back-End ratio is as follows:

- Maximum Back-End ratio requirements of 45% for all households below 120% AMI.

SECTION 3.9 Occupancy Limits

Household occupancy limits for purchasing a unit will be based upon Section 503(b) of the Uniform Housing Code, which specifies allowable minimum and maximum household sizes based upon the number of bedrooms in a unit. The minimum occupancy is one person or the number of bedrooms minus one, whichever is greater. Maximum occupancy of the unit is

determined as follows: each bedroom may have a maximum of two people; one additional person may live outside of a bedroom within the unit.

Applying these standards, to purchase a two-bedroom unit, there must be a minimum of two people in the household and a maximum of five. See table below for occupancy limits by unit type:

Unit Type	Minimum Occupancy/ Maximum Occupancy
Studio	1 Person Minimum/ 2 Person Maximum
1 Bedroom	1 Person Minimum / 3 People Maximum
2 Bedrooms	2 People Minimum / 5 People Maximum
3 Bedrooms	3 People Minimum / 7 People Maximum
4 Bedrooms	4 People Minimum / 9 People Maximum

All of the following criteria must be present to be considered a bedroom:

- **Size:** Size: A bedroom must be at least seventy (70) square feet (exclusive of closets, bathrooms, or similar spaces) with no less than seven (7) feet in any horizontal direction.
- **Door Window:** A bedroom must have a door and window. The window must open to an area which leads either to a street or yard space.
- **Direct Connection or Bathroom:** A bedroom must either: (1) have a direct connection to the living space of the property, OR (2) have a separate bathroom with a toilet and sink, and a bathtub or shower.

A bonus room or finished room will be considered a bedroom, if the room meets all the below criteria, regardless of its legalization. This includes the bedrooms, as well as any rooms that meet the bedroom definition in an Accessory Dwelling Unit or Junior Accessory Dwelling Unit, or any other part of the property. The number of bedrooms determined according to the FTHB Guidelines may differ from the number of bedrooms reflected in the appraisal or public records.

SECTION 3.10 Home & Pest Control Inspection Reports

A “general home inspection” performed by a licensed and independent third-party home inspector is required for all properties purchased with FTHB loans. The borrower, loan officer or

real estate agent is responsible for contacting a home inspector to schedule the inspection. The inspection should include electrical, wiring, plumbing, roofing, insulation, and structural features. Any reported deficiencies that pose an immediate health and safety hazard or code violation must be corrected as a condition to funding of a FTHB loan.

In addition, the City requires a “pest control inspection” report for wood destroying pests and organisms to be conducted by a reputable license holder issued by the California Department of Consumer Affairs and the California Structural Pest Control Board. The Pest Control Inspection Report cannot be more than 90 days old. Items listed in Section I of the pest control inspection indicate evidence of active infestation, infection or conditions that have resulted in or from infestation or infection, which generally need to be addressed to ensure that the Property has been appropriately treated, and the damage has been repaired for health and safety reasons. It is important to note that the City will not be held liable for any misrepresentation, false claims, or information contained in the inspection reports.

The City maintains the right to deny the FTHB loan due to the condition of the Property. If the first mortgage lender requires repairs to the Property, a copy of the clearance report must be obtained and submitted to the City before close of escrow. All health and safety construction or repairs must be complete at the close of escrow and ready to occupy. Escrow holdbacks for construction and repairs are not allowed.

SECTION 4. LOAN TERMS

This Section contains information regarding loans provided by the city to qualified Applicants as well as requirements for borrowers.

SECTION 4.1 Loan Type

The FTHB Loan will be offered as a deferred payment loan. Repayment is required upon the Sale or Transfer of the Property, and it will be recorded as a second deed of trust to the First Mortgage Loan. However, it may be subordinate to the CalHFA High-Cost Area Assistance Program (HiCAP) or California Housing Assistance Program (CHAP) loans. Subordination to another Down Payment Assistance Loan, exceeding the FTHB Loan amount, is subject to the City's discretion. At the end of the 30-year term, the accrued interest and principal is completely forgiven. There shall be no payments due on principal or interest owed so long as no Sale or Transfer of the Property or Event of Default has occurred. If the loan is paid off due to a sale, transfer, or a refinance prior to the 30-year loan term, then the principle and the greater of accrued interest or share of appreciation is due. See Section 4.10 Loan Payoff for more detail.

SECTION 4.2 Maximum Loan Amounts

The FTHB Program includes a tiered assistance system based on AMI levels and number of bedrooms to determine the maximum loan amount. The amount the Applicant may receive will vary depending on each Applicant's individual circumstances, however the maximum FTHB loan an Applicant can receive is based on the following:

- The loan amount for a studio and one-bedroom is capped at \$100,000 to support homeowners earning between 81% and 120% AMI.
- The loan amount for a unit with two or more bedrooms, is capped at \$150,000 to support homeowners earning between 81% and 120% of AMI.
- The loan amount for households at 80% AMI or below is capped at \$200,000, regardless of the number of bedrooms.

SECTION 4.3 Interest Rate

The interest rate for a loan from the FTHB Market Rate Program will be fixed at 3%.

SECTION 4.4 Property Appreciation

If the property has *appreciated* from the date of purchase to the date of repayment, the Promissory Note and Deed of Trust include Shared Appreciation provisions so that the City recoups a percentage of the profit made from selling the home in direct proportion to the dollars loaned at the time of purchase.

If the property has *depreciated* from the date of purchase to the date of repayment, the principal and interest due under the City's loan are reduced by a depreciation share. The depreciation share is equal to the appreciation share percentage. The principal and interest due

FTHB Market Rate Program Guidelines

under the City's loan are reduced by an amount equal to the product of the depreciation share multiplied by the depreciation amount.

SECTION 4.5 Borrower Contribution

A borrower may borrow up to 100% of the property's Combined Loan to Value (CLTV).

Downpayment funds may be from any source other than loan funds, such as the borrower's own funds, gift funds, or grants. Any gift funds provided by friends or family to the borrower must be accompanied by a gift letter acknowledging that the funds are not a loan and do not need to be paid back.

SECTION 4.6 Rental Restriction Agreement and Rental Income Reporting

Homebuyers with a rental unit will be required to execute a Rental Restriction Agreement restricting the rent for the rental unit for the duration of the City's loan. Annual reporting of the income from the rental unit will be required. Rental income will not be counted as part of the qualifying income for the homebuyer.

SECTION 4.7 Eligible Use of Funds

The FTHB Loan can be utilized for down payment and closing costs.

SECTION 4.8 In-Eligible Use of Funds

The FTHB Loan cannot be used to pay for improvement and repair costs.

The FTHB Loan cannot be used to pay down the First Mortgage principal, debts or liens or to buy down the First Mortgage interest rate. If the Applicant is required by the First Mortgage Lender to pay off debts in order to qualify for the First Mortgage, these items must be paid by the Applicant, and reduced from the maximum assets allowable under the FTHB Program. In such case, the First Lender is required to evidence the need by providing the underwriting documents such as Underwriting Transmittal Summary (Form 1008), and Desktop Underwriter/Loan Prospector (DU/LP) findings. The amount of the debts must match the amount on the Closing Disclosure or Settlement Statement, as applicable.

SECTION 4.9 Documentation and Security

The following documents must be executed by the Borrower to secure a FTHB loan after satisfaction of all requirements for funding:

- Program Affidavit, executed by Borrower, acknowledging that s/he has read this Manual and program restrictions.
- Deed of Trust, executed at the close of the escrow by Borrower for the benefit of the City to secure the Promissory Note. The Deed of Trust is subordinate to the first mortgage deed of trust, and in the second lien position unless otherwise approved by the City.

- Promissory Note, executed at the close of the escrow by Borrower for the benefit of the City and secured by the Deed of Trust. The Note provides for a share of appreciation and is due and payable, in full, according to the loan terms.

SECTION 4.10 Payoff Requests

Borrowers must submit a written request for payoff. In addition, Borrowers must submit a ratified Purchase Agreement (if applicable), and/or a fair market appraisal report obtained at their own cost. The amount due and owing will be the principal plus the greater of accrued interest or share of appreciation, plus the loan payoff fee. The share of appreciation will be determined by a Purchase Agreement and/or a fair market appraisal report, dated within ninety (90) days of submitting the payoff request. Reasonable and customary non-recurring sales costs may be deducted prior to repayment of this loan, if the total outstanding loan balances exceed the current fair market value at the time of sale. Payoff quotes are provided in writing from the City and are valid for 90 days.

SECTION 4.11 Loan Default

It is important that Borrowers understand the program rules and procedures fully. Any violation of the program rules and restrictions may result in the City declaring the Borrower to be in default of the loan and may lead to the immediate repayment of the FTHB loan and/or other enforcement actions. Borrowers are encouraged to contact the City as soon as possible if they are at risk of a loan default, or a foreclosure, or if HOA payments/special assessments become unaffordable.

The following are the most common causes for the City to declare the FTHB loan in default. The list is not exhaustive, and borrowers shall review the Deed of Trust to confirm the Events of Default.

- Failure to occupy the home as your principle place of residency.
- Failure to comply with the Annual Owner Occupancy Monitoring.
- Renting or sub-letting of the property, without the City's prior consent.
- Loans, liens, or lines of credit taken out against the property, without the City's prior consent.
- Default in the payment or performance of any obligation secured by a lien, mortgage or deed of trust which is superior to the FTHB loan.
- Sale, Transfer or Conveyance of the Property, without the City's prior consent.

SECTION 5. MORTGAGE LOAN RESTRICTIONS

This Section describes the requirements for Mortgage Loans.

SECTION 5.1 First Mortgage Loan

The First Mortgage Loan must be no more than a 30-year, fully amortizing fixed-rate mortgage. It may not have negative amortization, principal increases, balloon payments, or deferred interest payments. The City reserves the right to identify additionally prohibited loan programs and/or characteristics.

SECTION 5.2 Adjustable-Rate Mortgage Restriction

The senior mortgage may not be an adjustable-rate mortgage.

SECTION 5.3 Maximum Total Loan to Value Ratio

A borrower of a senior loan may borrow up to 100% of the property's Combined Loan to Value (CLTV).

Downpayment funds may be from any source other than loan funds, such as borrower's own funds, gift funds, or grant. Any gift funds provided by friends or family to the borrower must be accompanied by a gift letter acknowledging that the funds are not a loan and do not need to be paid back.

SECTION 5.4 Third-Party Credits and Contributions

Credits and contributions from a third party, such as the seller, the real estate agent or broker, or the Lender, are allowed for non-recurring loan closing costs. All credits must be used in escrow; no more than \$250 cash may be paid to Borrower at close of escrow. Any excess cash must first be applied towards the reduction of the FTHB loan amount.

SECTION 6. REFINANCE/OTHER LIENS/SHORT SALE POLICY

This Section covers refinancing First Mortgage Loans and other loans the borrower may take out against the property. This section also describes the City's approach to approving the short sale of a loan.

SECTION 6.1 Refinancing First Mortgage Loan

Borrowers must obtain the City's written approval to refinance their First Mortgage Loan. Refinancing the First Mortgage Loan will not require repayment of the FTHB loan if the new first mortgage is for an amount equal to, or less than, the original first mortgage and the city's lien position is to be maintained. All other requirements for senior financing under Section 5 apply to the new first mortgage. The same individuals that were named as Borrowers on the FTHB Loan must also be named as Borrowers on any refinanced First Mortgage Loan unless the City has approved the addition of a Borrower by marriage or domestic partnership or the removal of a Borrower by death, divorce or dissolution of domestic partnership or similar change to the household configuration in writing. Failure to obtain city written approval to refinance a first mortgage is in violation of the program restrictions and will cause the FTHB loan to be immediately due and payable. -

SECTION 6.2 Other Loans/Liens Post Escrow

Borrowers must obtain the City's written approval for the addition of any loan/ lien on the Property regardless of the lien position post close of escrow. At all times the City's lien position must be maintained and will only be subordinated to the City's subordination policy. Failure to obtain city approval is in violation of the program restrictions and will cause the FTHB loan to be immediately due and payable..

SECTION 6.3 Request City Authorization

When requesting approval to refinance or to obtain an additional loan or lien on the Property, Borrower must:

- Be up to date with Owner Occupancy Monitoring and in compliance with the FTHB program rules;
- Pay an administrative fee posted on the City's website;
- Submit all the required documents on the refinance checklist;
- Satisfy any other requirements outlined in Section 5 of the Program Guidelines.

SECTION 6.4 Subordinate FTHB Loan

While the City has the ability to require repayment of the City's loan upon refinancing the primary loan, as established in the program's promissory note and deed of trust, the Agency may agree to subordinate to a new first mortgage, under the condition stated above, in order to help borrowers stabilize or reduce their housing costs.

SECTION 6.5 Short Sale of Loan

The City will consider approving a short sale on the loan, based on an appraisal or other documentation of recent comparable sales data to determine the fair market value of the property. Non-recurring seller's costs and a reduced total real estate broker's commission of 5% may be deducted prior to the repayment of the City's loan.

SECTION 7. OWNER-OCCUPANCY WAIVERS

This Section describes the eligibility requirements and restrictions for owner-occupancy waivers that may be given by the City.

SECTION 7.1 Eligibility Requirements

Owner occupancy waivers of up to one year may be granted under one or more of the following circumstances:

- The current documented fair market value of the property is less than the outstanding balance on the first mortgage lien;
- The property is in foreclosure;
- Litigation related to the development precludes a first-time homebuyer from obtaining mortgage financing;
- The owner is on active military duty; and/or
- For reasons deemed acceptable by the City, in its sole discretion, that are temporary in nature (e.g. sabbatical, caring for a sick relative, temporary relocation for work) after which the owner unambiguously intends to return to the unit as an owner occupant.

Owner-occupancy waiver applicants must have made the request and provided supporting documentation at least 60 days prior to the commencement of the waiver period. Specific documentation requirements will be based upon the conditions under which the waiver will be granted. The City staff will inform the owner occupancy waiver applicant of expiration of the owner-occupancy waiver period. If the waiver is granted, the property may be rented during the City-approved owner-occupancy waiver period.

SECTION 7.2 Owner-Occupancy Waivers Extensions

Owner-occupancy waivers for more than a year shall only be granted, in no more than one-year increments, under the following circumstances:

- The current documented fair market value of the property is less than the outstanding balance on the first mortgage lien;
- The property is in foreclosure;
- Litigation related to the development precludes a first-time homebuyer from obtaining mortgage financing; or
- The program participant or a member of the program participant's household is on active military duty.

Owner-occupancy waiver recipients requesting an extension to the owner-occupancy waiver must have made the request and provided supporting documentation at least 60 days prior to the expiration of the owner-occupancy waiver period.

At the end of the owner-occupancy waiver period, if the unit owner does not reoccupy the unit, the City's loan must be repaid.

SECTION 7.3 Eligibility for Participants with Principal Residences Elsewhere

Program participants who have purchased a principal residence elsewhere shall not be eligible for owner-occupancy waivers.

SECTION 7.4 Requirement to Rent during Waiver Period

Upon approval of an owner-occupancy waiver, the Owner of the property may rent the unit during the City approved owner-occupancy waiver period, if it meets the following requirements:

- Initial rent cannot exceed total documented housing expenses (including mortgage principal and interest, property taxes, HOA dues, and insurance).
- Total period for which the Property is leased does not exceed twelve (12) months and is not offered as a short-term rental.
- Tenants must acknowledge, in writing, that the rental is temporary.

Owner-occupancy waiver recipients shall provide a draft lease/rental agreement to the City for approval prior to executing the lease/rental agreement with a tenant. The owner shall provide an executed lease/rental agreement to the City within seven days of execution.

SECTION 8. GENERAL REQUIREMENTS

This Section describes the general requirements of the FTHB program.

SECTION 8.1 Title Insurance Policy

The outstanding principal balance of the down payment assistance loan must be covered by an ALTA Lender's Policy of Title Insurance naming the City of Emeryville c/o EDH Division as its interests appear.

SECTION 8.2 Non-Discrimination

All Borrower eligibility requirements contained in these guidelines must be applied without regard to the race, creed, color, gender, religion, or national origin of the Borrower. Information received by the City is only for purposes of verifying the Applicants' eligibility for a FTHB loan.

SECTION 8.3 Maintenance

Borrower will maintain the Property in compliance with all applicable laws, ordinances, and regulations and in a good and clean condition. The Borrower will not destroy, damage, or impair the property, allow the Property to deteriorate, or commit waste on the Property.

SECTION 8.4 Hazard or Property Insurance

The Property must be covered by a property insurance policy for a minimum of its replacement value. The City must be named as an additional insured or loss payee on the insurance policy. For Condominiums or attached Townhouses, if HOA master policies do not cover replacement of the interior of the Property, the Borrower must obtain and maintain separate HO-6 condominium or other homeowner insurance policy that lists the City as an additional insured or loss payee for the life of the loan. The loss payee clause must read as follows:

City of Emeryville, its Successors and/or Assigns
C/O EDH Division
1333 Park Avenue
Emeryville, CA 94608

SECTION 8.5 No Renting

Except as provided in Section 4.6 and Section 7, the Borrower is prohibited from renting or sub-leasing any part of the Property without prior written approval from the City. No part of the Property can be rented or sub-leased as a short-term rental or listed on short-term rental or vacation rental sites at any time.

Appendix 1: Household Income and Assets

This appendix provides a detailed description of the types of Household income included in considerations of Applicant eligibility for the FTHB Market Rate Program.

A. Income Inclusions

The following sources of income are included in the income calculation.

Wages, Salaries, Tips: The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, fringe benefits, tips and bonuses. Includes compensation for services rendered, such as freelance, online businesses, side businesses, consulting and self-employment.

Business Income: The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of Assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or Assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or Assets invested in the operation by the family.

Interest and Dividends: Interest, dividends, and other net income of any kind. Expenditures for amortization of capital indebtedness may not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in Business Income (above).

Retirement and Insurance Income: The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount.

Social Security Income (SSI) and Supplemental SSI: Deferred periodic amounts from Social Security and SSI benefits that are received in a lump sum amount or in prospective monthly amounts.

Unemployment and Disability Payments: Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation, and severance pay (except as provided in Inheritance and Insurance **Income** under Income Exclusions).

Welfare Assistance Payments: Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income except any amount designated for shelter or utilities.

Armed Forces Pay: All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in Armed Forces Hostile Fire under Income Exclusions).

Adoption Assistance, Child Support, and Alimony Payments. All forms of adoption assistance, child support, and alimony payments.

Cash income: From all bank accounts held in whole or part from each member of the Household over 18 years old.

Periodic Payments: Periodic payments made on your behalf by others including but not limited to, rent and living expenses such as retirement and insurance income including Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and a lump-sum amount or prospective monthly amount for the delayed start of a periodic payment, alimony and child support payments, or regular contributions or gifts received from organizations or from persons not residing in the dwelling. See Income Exclusions for exceptions to these cases.

Certain Assets: Certain Assets will be included in the income calculation and are specified in this Appendix, below.

B. Income Exclusions

The following sources of income will not be included in the income calculation.

Income of Children: Income from employment of children (including foster children) under the age of 18 years and full-time students living elsewhere.

Foster Care Payments: Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant, who are unable to live alone).

One-Time Inheritance and Insurance Income: One-time additions to Household Assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains, and settlement for personal or property losses (except as provided in Unemployment and Disability in Income Inclusions).

Medical Expense Reimbursements: Amounts received by the Household that are specifically for, or in reimbursement of, the cost of medical expenses for any Household member.

Student Loans: The full amount of student financial aid, including grants, scholarships, educational entitlements, work study programs, or financial aid packages.

Armed Forces Hostile Fire Pay: The special pay to a Household member serving in the Armed Forces who is exposed to hostile fire.

Home Care Assistance: Amounts paid by a state agency to a Household with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled Household member at home. This exclusion does not apply to a Household member that earns income providing home care assistance outside of their Household.

Certain Assets: Certain Assets will be excluded in the income calculation and are specified in this Appendix, below.

C. Asset Calculations

In some cases, liquid Assets will be included in Income calculations. A Household that has Assets that exceed \$30,000 will have the following amounts added to their total Household income:

- 10% of Assets between \$30,001 and \$130,000
- 30% of Assets over \$130,000

The maximum amount of allowable Assets is \$250,000.

In determining whether a Household's Assets are within the Asset limits, the average of each account's balance from the prior six monthly statements for each monetary Asset (bank, credit union, non-retirement investment account statements) will determine the current value of each Asset. Non-monetary Assets, such as stock options, mobile homes, commercial real estate, etc., will be valued based on a current valuation (not less than 90 days old) to be provided by a qualified third-party appraiser or estimator, which must be included in the Applicant's Full Application. The Household's current total combined Household Assets, both on the application date (most recent monthly statements/valuations in application) and using the average balance over the preceding 6 months, must be within these Asset limits.

The Director of Community Development or their designee reserves the right to request additional documentation, if needed, to accurately assess the value of Assets.

D. Asset Inclusions

The following types of assets are included in the asset calculation.

1. Cash held by a member of the Household in savings accounts, checking accounts, safe deposit boxes, etc. Includes all custodial accounts held for minors. For savings accounts, the current balance is used. For checking accounts, the average 3-month balance is used.
2. Cash value of revocable trusts available to a member of the Household.
3. Cash value of stocks, bonds, Treasury bills, certificates of deposit, and money market accounts.
4. Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life or universal life policy).
5. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, cars owned in excess of one per driver, etc.
6. Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements, gifts, and other amounts not intended as periodic payments.
7. Mortgages or deeds of trust held by a member of the Household.
8. Equity in cooperatives.

9. Assets in IRS-recognized retirement accounts (IRAs, 401(k)s, 403(b)s, etc.), that the Applicant can access prior to terminating employment or retiring, regardless of penalty (while Applicant is employed). If Applicant is retired, any amount they elect to receive as a lump sum will be counted as an Asset.

E. Asset Exclusions

The following types of assets are excluded from the asset calculation.

1. Necessary personal property, such as clothing, furniture, cars, and vehicles specially equipped for persons with disabilities.
2. Interest in Indian trust lands.
3. Assets not effectively owned by a member of the Household; that is, when Assets are held in an individual's name, but the Assets and any Income they earn accrue to the benefit of someone else who is not a member of the Household and that other person is responsible for income taxes incurred on Income generated by the Asset.
4. Assets not accessible to and that provide no Income for the Household, e.g., a battered spouse who owns a house with her husband but, because of the domestic situation, receives no income from the Asset and cannot convert the Asset to cash.
5. Term life insurance policies (i.e., where there is no cash value).
6. Assets that are part of an active business including business equipment and vehicles.
7. Future/potential pension benefits or insurance proceeds held in accounts not currently owned and controlled by the Applicant or co-Applicant(s). (However, amounts must be listed on the application, and documentation provided, as described on the application.) IRA, Keogh, and similar retirement savings accounts where benefits are being received through periodic payments will also be excluded from the calculation of Assets.
8. 529 college savings accounts.