



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper
Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: July 27, 2021

Approved

Date

7/27/2021

COUNCIL DISTRICT: 3

SUBJECT: TAX EQUITY AND FISCAL RESPONSIBILITY ACT HEARING FOR CALIFORNIA MUNICIPAL FINANCE AUTHORITY'S ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS TO FINANCE THE 425 AUZERAIS APARTMENTS

RECOMMENDATION

- a. Hold a Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") public hearing for the issuance not to exceed \$45,000,000 of tax-exempt private activity revenue bonds by the California Municipal Finance Authority ("CMFA") to finance and refinance the acquisition, construction, improvement and equipping of the 130-unit affordable apartment complex to be located at 425 Auzerais Avenue, 429 Auzerais Avenue, 433 Auzerais Avenue, 435 Auzerais Avenue, 437 Auzerais Avenue, and 383 Delmas Avenue in San José (the "Project"); by SJ Auzerais, L.P., a California limited partnership (the "Borrower"); and to pay certain expenses incurred in connection with the issuance of the bonds.
- b. Adopt a resolution approving the issuance of tax-exempt revenue bonds, by the CMFA in an aggregate principal amount not to exceed \$45,000,000 to finance and refinance the acquisition, construction, improvement and equipping of the Project, and to pay certain expenses incurred in connection with the issuance of the bonds.

OUTCOME

The Tax Equity and Fiscal Responsibility Act of 1982 hearing provides an opportunity for the public to review and provide comments on the issuance of \$45,000,000 of tax-exempt revenue bonds for the development of the 425 Auzerais Apartments affordable housing development. Additionally, approval of the recommended action will authorize CMFA to issue tax-exempt bonds to finance the construction and operation of the Project, with no City funding, providing 128 affordable apartment units and two unrestricted manager's units. This will allow the Borrower to move forward with their current financing plan and develop much needed affordable housing.

BACKGROUND

The City's Policy for the Issuance of Multifamily Housing Revenue Bonds (City Policy 1-16) states that the City shall be the issuer of all bonds financing multifamily housing rental projects within the City, with specified exceptions. One of these exceptions allows an outside issuer to issue bonds for affordable housing within the City when there are "special circumstances" merited by the circumstances of the project and the financing. When the City is not the issuer of bonds for the project, it is the City's policy to require the issuer to assume full responsibility for issuance and ongoing compliance of the bond issue with federal tax and state laws. The policy states the City will hold The Equity and Fiscal Responsibility Act of 1986 Hearing (TEFRA hearing).

The CMFA was established in 2004 under the California Government Code as a statewide Joint Powers Authority to provide local governments and private industry access to tax-exempt low-interest financing to achieve public benefit goals. The Board of Directors of the California Foundation for Stronger Communities ("CFSC"), a California non-profit public benefit corporation, acts as the Board of Directors for CMFA. CMFA shares a portion of its issuance fees with its member communities and donates a portion of issuance fees to the Foundation for the support of local charities. It is expected that 25% of the issuance fee will be contributed by CMFA to the City's General Fund, to be used for any lawful purpose.

On February 2, 2021, the City Council adopted a resolution authorizing the issuance of Bonds by CMFA as the conduit issuer for the Project under Section I.C of the City Council Policy No.1-16 for special circumstances. At that time, the Project had all sources in place, was not seeking City loan financing, and was ready to apply for bond allocations from the California Debt Limit Allocation Committee ("CDLAC") on February 4, 2021. Due to the timing of the upcoming financing round, the City did not have capacity to prepare for another issuance of bonds in time for the February application.

The Auzerais Avenue Apartments development does not have a City loan, therefore, consistent with the City's Multifamily Housing Revenue Bond Policy, special circumstances related to the financing of the development arose and staff recommended an exception to the policy allowing this project to move forward with an outside bond issuer.

On February 4, CMFA, on behalf of SJ Auzerais, L.P., applied to California Debt Limit Allocation Committee (CDLAC) for an allocation. On April 28, 2021, the 425 Auzerais project was awarded \$42,014,597 of the 2021 State Ceiling on Qualified Private Activity Bonds for use by the applicant to issue bonds by October 25, 2021.

ANALYSIS

The 425 Auzerais Apartments will create 128 new affordable apartments and two manager apartments in the Diridon Station Area. The development is located a half mile from the Diridon Station at the corner of Auzerais Avenue and Delmas Avenue. Funding secured from outside partners includes \$13.2 million in Measure A funds from Santa Clara County, \$5.5 million in Infill Infrastructure Grant funds from the state, and 64 project-based vouchers from the Santa Clara County Housing Authority. Half of the apartments (64) will be permanent supportive housing (PSH) providing a safe and affordable home for our unhoused residents. Those apartments will be supported by Section 8 project-based vouchers as well as an operating subsidy to cover the cost of providing supportive services. The remaining apartments will be restricted to households earning 50–60% of the Area Median Income (AMI).

Table 1 – Affordability Restriction and Bedroom Breakdown

UNIT SIZE	UP TO 30% AMI			UP TO 50% AMI			UP TO 60% AMI			Manager's Unit	TOTAL
	Units	Max Income **	Rent Limits	Units	Max Income **	Rent Limits	Units	Max Income **	Rent Limits		
Studio	58	\$39,800	\$907	28	\$66,300	\$1,512		\$79,560	\$1,815		86
1-BD	2	\$44,750	\$1,021	5	\$74,600	\$1,702	9	\$89,520	\$2,043		16
2-BD	4	\$49,700	\$1,134	10	\$82,850	\$1,891	12	\$99,420	\$2,269		26
Manager's Unit	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	2	2 *
Total	64			43			21			2	130

* Unrestricted managers' units

**Maximum incomes limits are based upon HCD occupancy guidelines of 1 person per bedroom, plus 1.

Voucher Supported Unit Mix

Unit size and Affordability	PBV	VASH	Total
	30% AMI	50% AMI	
Studios	38	20	58
1-BD	2		2
2-BD	4		4
Total	44	20	64

CMFA has requested that the City Council, as the applicable elected representative of the jurisdiction, consent to its issuance of tax-exempt bonds for the Project in an amount not to exceed \$45,000,000. The bond proceeds and other sources, including low income housing tax credit equity, will finance the construction of the Project.

TEFRA Public Hearing Requirements

Pursuant to Section 147(f) of the Internal Revenue Code of 1986, the issuance of the Bonds by CMFA requires the City's approval because the projects are located within the territorial limits of the City. The proposed bond issuance by CMFA is classified as a private activity for purposes of the Internal Revenue Code (the "Code"). A qualified private activity bond is a bond issued to fund a project for a private entity which meets certain requirements under the Internal Revenue Code in order for the interest received by the bondholder to be excluded from gross income for federal income tax purposes.

For the interest on the bonds to be excluded from the gross income of the owner of the bonds (i.e. tax-exempt), an "applicable elected representative" of the government unit must approve the issuance of the bond after a public hearing ("TEFRA Hearing"). Because CMFA's Board of Directors is not an elected body, the Code provides that a governmental unit with elected representatives and jurisdiction over the area in which the project to be financed is located, in this case, the City Council of San José, is an "applicable elected representative" with respect to the bond issue. The Council's approval of the action items is not approval of the Project for any other purpose.

The TEFRA Hearing is scheduled to be held as part of the action items on the August 10, 2021 Council Agenda and serves as a method of notifying the community of CMFA's intent to approve and issue tax-exempt private activity bonds for the Project. The public hearing notice will be published in the *San José Post-Record* on or about July 16, 2021, announcing the time and location of the public hearing.

Federal tax law limits the types of projects that may be funded with tax-exempt bond proceeds since the interest earned on such bonds is exempt from federal taxation. The purpose of a TEFRA public hearing is to identify a project which may subsequently receive funding from the sale of private activity tax-exempt bonds. A hearing will also provide interested individuals or parties the opportunity to provide testimony on any matters related to such potential bond issues, including the nature and location of the project.

CONCLUSION

This action allows CMFA to issue bonds for the Auzerais affordable housing development as previously approved by the City Council. This will result in the construction of 128 units of affordable apartments (and two manager units) that will provide a range of housing opportunities from extremely low-income to low-income households.

EVALUATION AND FOLLOW-UP

This action will facilitate the issuance of tax-exempt revenue bonds by CMFA and requires no follow-up with the City Council. The Housing Department posts periodic reports on the status of affordable properties undergoing rehabilitation or construction in the City to its website, www.sjhousing.org. If the recommended actions are approved and Auzerais Development successfully closes construction financing, it would be included in these Quarterly Production Reports.

CLIMATE SMART SAN JOSE

The recommendation in this memo is consistent with the Climate Smart San José energy, water, or mobility goals and it contributes to sustainability in a number of ways that will help San José achieve these goals:

- maximum amount of solar photovoltaic panels that can fit on its roof
- an all-electric building with no gas infrastructure
- will receive a Green Point Rated (GPR) certification for sustainable design with a projected rating of Gold
- reduced parking ratio of less than 0.5 spaces per unit, which will discourage the use of SOVs for commuting and encourage residents to use the dense transit network in downtown San José
- low-flow efficient water fixtures in residential units and drought-tolerant landscaping with smart irrigation systems to reduce water consumption

PUBLIC OUTREACH

The TEFRA hearing to be held as part of the action items on the August 10, 2021 Council Agenda is a method of notifying the community of CMFA's intent to issue tax-exempt private activity bonds for this project. The public hearing notice will have been published on or before July 16, 2021 in the *San José Post-Record* announcing the time and location of the public hearings.

COMMISSION RECOMMENDATION/INPUT

This item was not heard by the Housing and Community Development Commission, as approvals of affordable development financing do not fall under the functions, powers, and duties of the Commission delineated in Section 2.08.2840 of the San José Municipal Code.

COST SUMMARY/IMPLICATIONS

By not exercising its option to be the bond issuer, the City will forego its standard issuance fees and the annual fees associated with the bond monitoring obligation. However, as consideration for this request, the City will charge its \$5,000 TEFRA hearing fee for non-City bond issuances. Additionally, it is expected that 25% of the CMFA issuance fee, or \$18,000, will be contributed by CMFA to the City. There are no other fiscal impacts to the City as there are no City funds allocated to the Project after the existing City Loan is fully repaid at closing of the bonds. Repayment of the tax-exempt bonds issued by CMFA will be secured solely by the Project's revenues.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's Consolidated Plan 2020-2025, adopted by the City Council on August 11, 2020, the Community Plan to End Homelessness, and with the City's Adopted Housing Element 2014-2023 in that the action facilitates the development of affordable housing for low-income, very low-income households and homeless individuals.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

CEQA

Exempt per Public Resources Code Section 21080(b)(1) and CEQA Guidelines Section 15369, Ministerial Project pursuant to Government Code Section 65913.4, File No. ER20-109.

/s/
JULIA H. COOPER
Director of Finance

/s/
JACKY MORALES-FERRAND
Director of Housing

For questions, please contact Nikolai J. Sklaroff, Deputy Director of Finance, Debt & Treasury Management at (408) 535-7832 or Rachel VanderVeen, Deputy Director of the Housing Department at (408) 535-8231.