



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Julia H. Cooper
Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: October 17, 2022

Approved

Date

10/28/2022

COUNCIL DISTRICT: 9

SUBJECT: TAX EQUITY AND FISCAL RESPONSIBILITY ACT HEARING FOR CALIFORNIA MUNICIPAL FINANCE AUTHORITY'S ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS TO FINANCE THE 2350 S. BASCOM AFFORDABLE HOUSING DEVELOPMENT

RECOMMENDATION

- a. Hold a Tax Equity and Fiscal Responsibility Act of 1982 public hearing for the issuance of not to exceed \$65,000,000 of tax-exempt multifamily housing revenue bonds by the California Municipal Finance Authority, to finance and refinance the acquisition, construction, improvement and equipping of the 123-unit affordable apartment complex to be located at 2350 S. Bascom Road in San José by San José Bascom Associates, L.P., a California limited partnership or an affiliate; and to pay certain expenses incurred in connection with the issuance of the bonds; and
- b. Adopt a resolution approving the issuance of tax-exempt multifamily housing revenue bonds, by the California Municipal Finance Authority in an aggregate principal amount not to exceed \$65,000,000 to finance and refinance the acquisition, construction, improvement and equipping of 2350 S. Bascom, and to pay certain expenses incurred in connection with the issuance of the bonds.

OUTCOME

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) hearing provides an opportunity for the public to review and provide comments on the issuance of \$65,000,000 of tax-exempt revenue bonds for the development of 2350 S. Bascom affordable housing development (the Development). Additionally, approval of the recommended action will authorize the California Municipal Finance Authority (CMFA) to issue tax-exempt bonds to finance the construction and operation of the Development, with no City funding, providing 122 affordable apartments and

one unrestricted manager's unit. This will allow the Development to move forward with their current financing plan and develop much needed affordable housing.

BACKGROUND

The Council Policy for the Issuance of Multifamily Housing Revenue Bonds (Council Policy 1-16) (Policy) states the City shall be the issuer of all bonds financing multifamily housing rental developments within the City, with specified exceptions. One of these exceptions allows an alternate issuer to issue bonds for affordable housing within the City when there are "special circumstances" merited by the circumstances of the development and the financing. In the case the City is not the issuer of bonds for the development, it is 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 also states the City will hold the TEFRA public 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, 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 California Foundation for Stronger Communities for the support of local charities. It is expected that 25% of the CMFA issuance fee, or \$15,750, will be contributed by CMFA to the City.

On October 18, 2022, the City Council adopted a resolution authorizing the issuance of bonds by CMFA as the alternate issuer for the Development under Section I.C of the Policy for special circumstances. At that time, the Development had all sources in place, was no longer seeking City loan financing and applied for a \$48,000,000 bond allocation from the California Debt Limit Allocation Committee (CDLAC) on March 16, 2022. On June 15, 2022, the 2350 S. Bascom development was awarded \$34,409,000 of the 2021 State Ceiling on Qualified Private Activity Bonds for use by the applicant to issue bonds by December 12, 2022. 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 March application.

Pacific West Communities, Inc. (Sponsor) on behalf of San José Bascom Associates, a California limited partnership, a partnership of which Pacific West Communities, Inc. or another entity to be created by the Sponsor, a related person to the Sponsor is the general partner, or an affiliate of the Sponsor (the Borrower or affiliate) made a request for CMFA to issue bonds for the development. The 2350 S. Bascom development does not have a City loan, therefore, consistent with the Policy, special circumstances related to the financing of the development arose and staff recommended an exception to the Policy allowing this development to move forward with an outside bond issuer.

ANALYSIS

The Development is a 123-unit, five-story new affordable rental development proposed by lead sponsor Pacific West Communities and co-sponsor Golden West Communities LLC. With a mix of apartment sizes, the proposed development will provide housing for individuals and families earning between 30% and 80% Area Median Income (AMI). The developer’s request for funding from the City’s December 2021 Notice of Funding Availability was not included in the application as a source of financing. Instead, a recycled bond was included as a new source of financing. The developer confirmed they no longer need City funds and, therefore, the Housing Department will not be seeking a funding commitment for the Development.

Table 1: 2350 S. Bascom Affordability Unit Mix and AMI Levels

Unit Type	30% AMI	50% AMI	60% AMI	80% AMI	Manager	Total
Studio	6	6	32	6	-	50
One-bedroom	1	1	2	1	-	5
Two-bedroom	3	3	22	3	-	31
Three-bedroom	3	3	15	15	1	37
Total	13	13	71	25	1	123

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 Development in an amount not to exceed \$65,000,000. This TEFRA public hearing amount is set higher than the Borrower’s CDLAC application amount of \$48,000,000 in order to provide a cushion, due to rising construction and financing costs, in case the Development must return to CDLAC for an additional award. The bond proceeds and other sources, including low-income housing tax credit equity, will finance the construction of the Development.

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 developments 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. A qualified private activity bond is a bond issued to fund a development for a private entity that 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.

In order for the interest on the bonds to be exempt from federal income tax, an "applicable elected representative" of the government unit must approve the issuance of the bond after a

public hearing (TEFRA Public Hearing). Because CMFA's Board of Directors is not an elected body, the Internal Revenue Code provides that a governmental unit with elected representatives and jurisdiction over the area in which the development 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 Development for any other purpose.

The TEFRA Public Hearing is scheduled to be held as part of the action items on the November 8, 2022, San José City 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 Development. The public hearing notice will be published in the *San José Post-Record* on or prior to October 31, 2022, announcing the time and location of the public hearing.

Federal tax law limits the types of developments 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 development which may subsequently receive funding from the sale of private activity tax-exempt bonds. A hearing will also provide interested individuals the opportunity to provide testimony on any matters related to such potential bond issues, including the nature and location of the Development.

CONCLUSION

This action allows CMFA to issue bonds for the 2350 S. Bascom affordable housing development as previously approved by the City Council. This will result in the construction of 122 units of affordable apartments (and one manager's unit) 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 on its website, www.sjhousing.org. If the recommended actions are approved and 2350 S. Bascom Development successfully closes construction financing, it would be included in these periodic report

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 several ways that will help San José achieve the following goals:

- an all-electric building with no gas infrastructure;
- will receive a Green Point Rated certification for sustainable design; and
- low-flow efficient water fixtures in residential units and drought-tolerant landscaping with smart irrigation systems to reduce water consumption.

PUBLIC OUTREACH

The TEFRA Public Hearing to be held as part of the action items on the November 8, 2022 San José City Council Agenda is a method of notifying the community of CMFA's intent to issue tax-exempt private activity bonds for this development. The public hearing notice will have been published on or before October 31, 2022 in the *San José Post-Record* announcing the time and location of the public hearings.

COORDINATION

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

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 Public Hearing fee for non-City bond issuances. Additionally, it is expected that 25% of the CMFA issuance fee, or \$15,750, will be contributed by CMFA to the City and will be deposited into the Housing Trust Fund. There are no other fiscal impacts to the City as there are no City funds allocated to the Development. Repayment of the tax-exempt bonds issued by CMFA will be secured solely by the Development's revenues.

FISCAL/POLICY ALIGNMENT

This expenditure is consistent with the following policy documents: *The City's Envision 2040 General Plan* and the *2014-23 adopted Housing Element* in that it will help the City meet its Regional Housing Needs Allocation; the City's current *Housing Investment Plan* in that it increases San José's supply of affordable housing; the *City's 2020-25 HUD Consolidated Plan* in that it will provide rental apartments affordable to very-low- and extremely-low-income households.

CEQA

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

/s/

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/s/

JACKY MORALES-FERRAND
Director of Housing

The principal author of this memorandum is Banu San, Housing Policy and Planning Administrator. For questions, please contact Qianyu Sun, Deputy Director of Finance – Debt and Treasury Management, at (408) 535-7832 or Rachel VanderVeen, Deputy Director of the Housing Department at (408) 535-8231.