

San Diego Housing Commission		
BOND ISSUANCE AND POST-ISSUANCE COMPLIANCE POLICY		
Subject: MULTIFAMILY MORTGAGE REVENUE BOND PROGRAM		
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1. SUMMARY

- 1.1 Federal, state and local legislation authorize the issuance of mortgage revenue bonds by local governments to finance the development, acquisition, construction and rehabilitation of multifamily rental projects. The interest on the bonds can be exempt from federal and state income taxation, and provide below market rate financing for qualified projects. In addition, properly- structured tax-exempt mortgage revenue bonds can qualify projects for allocations of federal low- income housing tax credits, which may provide a significant portion of the funding necessary to develop affordable housing. The San Diego Housing Commission ("Housing Commission") has established a program (the "Program") to issue mortgage revenue bonds for qualified multifamily rental projects within the City of San Diego (the "City"). The Housing Commission's Program uses tax-exempt and taxable mortgage revenue bonds (including notes and other debt instruments) issued by the Housing Authority of the City of San Diego ("Housing Authority"), as approved and recommended by the Housing Commission, to subsidize the development of affordable rental housing within the City.
- 1.2 There is no direct legal liability to the City, the Housing Authority or the Housing Commission in connection with the issuance or repayment of bonds; there is no pledge of the City's or the Housing Authority's faith, credit or taxing power and the bonds do not constitute general obligations of the issuer because the security for repayment of bonds is limited to project revenue and other sources specified in the documentation for each financing. Bonds for affordable housing projects are often effectively structured as real estate loans, and the obligation to repay the bonds is secured by a first deed of trust on the bond-financed property. The Program is completely self-supporting; developers must secure funding to pay for costs of issuance of the bonds and all other costs of each financing.
- 1.3 Bonds issued under the Program should generally be privately placed with a financial institution, or publicly issued with a minimum rating of "A", or its equivalent, by one or more of the nationally recognized rating agencies listed in Section 4.1. Proceeds of the bonds may be used for both costs of construction or rehabilitation and permanent financing. The effective mortgage rate is the aggregate of the applicable bond rate and the add-on fees charged under the program, such as lender, trustee, issuer's fee, etc. The bond rate, for fixed rate bonds, is determined at the time of a bond sale and the resulting mortgage rate is typically below conventional mortgage rates. The project loans generally have a 30-year amortization schedule although the bond maturity may be shorter.
- 1.4 The goals of the Program include: increase and preserve the supply of affordable rental housing; encourage economic integration within residential communities; maintain a quality living environment for residents of assisted projects and surrounding properties; and, in the event of provision of public funds towards the project, optimize the effectiveness of Housing Commission, or other public funding by maximizing the leveraging of private sector funds.
- 1.5 The bond issuance and related loan amount for individual projects is based upon project costs, interest rates, revenues available to pay debt service, and the appraised value of the project being financed. As approved and recommended by the Housing Commission, the Housing Authority will consider multiple properties as part of a single bond financing on a case by case basis. If a tax-exempt financing is involved, bond and related loan amounts will be subject to the procedures of the California Debt Limit Allocation Committee ("CDLAC"), as described in Section 2.3 below.

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- 1.6 Projects must consist of complete rental units, including kitchens and bathrooms. Bond proceeds may be used for costs of land acquisition (up to 25% of tax-exempt bond proceeds), construction, rehabilitation, improvements, architectural and engineering services, construction interest, loan fees and other capital costs of the project incurred after the date sixty days before the bond inducement date specified in Section 7.3. Tax-exempt bond proceeds cannot be used to acquire property from a party related to the buyer. No more than 2% of tax-exempt bond proceeds can be used to finance costs of issuance, such as the services of the financing team members, rating and printing of bonds, cost related to bond allocation, etc. Pursuant to federal tax-exempt bond requirements, if bonds are used for acquisition and rehabilitation, an amount equal to at least 15 percent of the portion of the acquisition cost of the building and related equipment financed with the proceeds of bonds must be used for rehabilitation of the project. The loans are assumable upon transfer of the project with the approval of the credit enhancement provider or bond purchaser, and the President and Chief Executive Officer of the Housing Commission ("CEO") or designee.
- 1.7 The San Diego Housing Authority has authorized the Housing Commission CEO or designee to adopt inducement resolutions. The San Diego City Council ("City Council") has authorized the Housing Commission to hold Tax Equity and Fiscal Responsibility Act ("TEFRA") hearings on behalf of the City Council by the Housing Commission CEO or designee. The Housing Authority's approval shall remain required for final bond authorization.
- 1.8 The Housing Commission receives compensation for its services in preparing bond issuances by charging an up-front administrative fee payable at the bond closing. In addition, the Housing Commission also receives ongoing, annual fees for compliance monitoring of regulatory restrictions and administrative oversight of outstanding bond issues.
- A. The administrative fee due on the bond closing date, is an amount equal to 25 basis points (0.25%) of the initial principal amount of bonds issued (or in the case of draw-down bonds [a bond structure with multiple draws over time]) the initial maximum authorized principal amount of bonds), not to exceed for tax-exempt and taxable bonds the amount otherwise allowed by the Internal Revenue Service ("IRS").
- B. The annual ongoing administrative fee will be an amount equal to (a) prior to conversion to permanent financing, 0.125% of the maximum authorized principal amount of the bonds as of the closing date for the bonds, and (b) after conversion to permanent financing, if applicable, 0.125% of the outstanding principal amount of the bonds immediately after conversion to permanent financing; however, the annual ongoing fee in any event will not be less than \$10,000. The annual fee will be charged each year during the compliance period under the Bond Regulatory Agreement for the project (see Section 3.1), to recover administrative and monitoring costs of the Housing Commission, which will be charged to all projects for such compliance period, including projects where bonds are fully repaid prior to the end of the compliance period. The ongoing annual fee will be due and payable without the requirement for any invoice to be delivered to the project owner, on the first day of the month in which the anniversary of the bond closing occurs based on the facts in existence as of such first day of such month. In no event shall the annual bond administrative fee exceed \$62,500 per year.
- C. The annual ongoing administrative fee will remain fixed based on using the principal amount of bonds outstanding at permanent financing conversion regardless of any later reductions of the outstanding principal of the bonds.
- D. Additional monitoring fees may be charged for monitoring affordable housing units governed by regulatory agreements in addition to the Bond Regulatory Agreement.

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- E. At the time of the application, the project proponent must pay a \$3,000 non-refundable application fee to the Housing Commission.
- 1.9 Due to IRS limitations applicable to fees charged by issuers of tax-exempt bonds where the bond purchaser and the tax credit investor are the same or related entities, the Housing Commission will not recommend, and the Housing Authority will not issue, bonds for projects where the tax credit investor is also the same or a related entity to the bond purchaser. Exceptions may be granted on an extremely limited case-by-case basis and at the discretion of the Housing Authority's Executive Director or designee.
- 1.10 To the extent that contractors will be providing services on behalf of a project proponent or a project owner related to the requirements of these Policies, the project proponent or project owner, as applicable, shall provide the Housing Commission with a written statement describing their relationship with the contractor and any rights the contractor has to income and obligations generated from any proposed bond issuance activity.
- 2. TYPES OF BONDS**
- 2.1 The Housing Authority, as approved and recommended by the Housing Commission, may issue either tax-exempt or taxable bonds (which include notes or other debt instruments), or both. Taxable bonds would generally be issued only in combination with tax-exempt bonds. Taxable bonds do not require TEFRA or an allocation of tax-exempt bond authority from CDLAC but still require compliance with State law requirements governing the Housing Authority's ability to issue bonds.
- 2.2 The interest paid on taxable bonds is not exempt from federal taxation. These bonds are not subject to federal volume "cap" limitations and therefore do not require allocation authority from CDLAC. Taxable bond issues must meet all applicable requirements of this Policy (including rating requirements), State law requirements and any additional regulations that may be promulgated, from time to time, by the Housing Commission.
- 2.3 Bond interest that is tax-exempt under federal tax law (other than refunding bonds and 501(c)(3) bonds described below) requires an allocation of bond authority from CDLAC. To obtain the allocation, the Housing Commission, through a resolution from the Housing Authority, must submit an application to CDLAC on behalf of the project proponent. Submittal of the application is at the discretion of the Housing Commission through a resolution from the Housing Authority, not the project proponent. The project proponent must provide all deposits and pay all fees required by CDLAC when due.
- 2.4 The Housing Authority, upon the approval and recommendation of the Housing Commission, may issue bonds described in section 145(c) of the federal tax code on behalf of qualified nonprofit organizations. The interest on these 501(c)(3) bonds is tax-exempt and these bonds do not require an allocation from CDLAC, but cannot be used with the Low Income Housing Tax Credit Program.
- 2.5 The Housing Authority, upon the approval and recommendation of the Housing Commission, will consider the issuance of bonds to refund outstanding bonds subject to the following conditions:
- A. The project proponent agrees to cover all costs of the issuer, including costs for the issuer's municipal advisor, bond counsel, and trustee (if applicable).

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- B. The affordability restrictions of the existing bond regulatory agreement are subject to extension. The Housing Commission reserves the right to impose additional requirements on a case by case basis. All specifics of refunding proposals must be approved by the Housing Authority.
- C. The provisions of Section 52080(g) of the California Health and Safety Code shall apply to projects financed under the Program, which requires that low-income units remain affordable, except in certain circumstances, until thirty (30) years after the commencement of the qualified project period (as referred to therein).
- D. Except in limited circumstances, the provisions of Sections 65863.10 and 65863.11 of the California Government Code shall apply to projects financed under the Program, and project proponents are advised to review the requirements of such Sections.
- E. Default refunding applications require a default refunding analysis (to determine the eligibility for a default refunding). The Housing Commission shall choose the firm to conduct the analysis. The project applicant will deposit the cost for the study with the Housing Commission before the study begins.
- 2.6 Bonds for projects are intended to be non-recourse conduit financing in which none of the Housing Commission, the Housing Authority or the City will be responsible for the repayment of the debt. The Housing Authority's own capital improvement plans and budgets should not be impacted by the bond financing of projects

3. AFFORDABILITY REQUIREMENTS

- 3.1 Term of Rental and Affordability Restrictions - The project must remain as rental housing and continuously meet the affordability requirements as provided in Sections 3.2, 3.3 and 3.4 for the longer of (a) the Qualified Project Period (as defined in Internal Revenue Code of 1986), (b) as long as the bonds remain outstanding, (c) such period as may be required in the opinion of Bond Counsel to satisfy applicable federal or State law, or (d) such period as maybe required by CDLAC (typically 55 years). Additional affordability may be required as described in 2.5(C) above. The rent of "in-place" tenants at the conclusion of the required affordability period will continue to be governed by the applicable affordability restriction, so long as those tenants continue to live in the development. The Housing Commission, through a resolution from the Housing Authority, reserves the right to impose additional affordability restrictions.

A Bond Regulatory Agreement containing the rental and affordability restrictions will be recorded against the project property and must be complied with by subsequent owners. The Bond Regulatory Agreement may be terminated upon expiration of restrictions or in the event of casualty loss or foreclosure, and the subsequent retirement of bonds as a result of foreclosure.

The Bond Regulatory Agreement will be drafted by the Housing Authority's bond counsel for the financing and must be in a form acceptable to and approved by the Housing Commission, through a resolution from the Housing Authority. The Bond Regulatory Agreement will set forth federal, state and Housing Authority requirements applicable to the operation of the project and pursuant to Section 5220(c)(1) of the CDLAC Regulations must incorporate by reference and as an attachment the CDLAC resolution allocating private activity bond authority to the Housing Authority for the project.

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State law requires advance notice and other requirements upon termination of affordability requirements, some of which also place restrictions on the sale of previously affordable housing projects, pursuant to the provisions described in 2.5(D) above.

3.2 **Income Restrictions** - To be eligible for tax-exempt bond financing, federal law requires that the project meet one of the following conditions:

- A. A minimum of 20% of the units in the project must be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size; or
- B. A minimum of 40% of the units in the project must be set aside for occupancy by households whose incomes do not exceed 60% of area median income, as adjusted by family size.

In any event, State law requires that a minimum of 10% of the units in the project be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size, at specified rent levels.

Project owners must certify their tenant's eligibility semi-annually or as otherwise required by the Housing Commission in the applicable Bond Regulatory Agreement. If a tenant is no longer eligible, the next available unit in the project (if federal tax credits apply to the project, in the building in which the unit was located) must be rented to a new eligible tenant and the current tenant's rent can be raised to a market level. A unit occupied only by full time students does not count towards the very low and low income unit set-aside requirements.

Affordability definitions are based on the area median income for the County of San Diego as established by the US Department of Housing and Urban Development. The median income is subject to change annually. Household size is determined under Section 34312.3(c)(1)(B) and (c)(2)(B) of the California Health and Safety Code consistent with Section 42(g)(2)(C) of the Internal Revenue Code. Section 42(g)(2)(C) requires that, in calculating rents, occupancy of units is assumed to be one person per studio unit, and for each other unit with one or more separate bedrooms, 1.5 individuals for each separate bedroom.

3.3 **Rent Restrictions** - The maximum rent for the affordable set-aside units shall not exceed 30% of one-twelfth of 50% of area median income, or 30% of one-twelfth of 60% of area median income (as the case may be, depending on the selected set-aside). The maximum rent amounts are further reduced by a utility allowance for tenant-paid utilities in the amounts determined by the Housing Commission's CEO or designee. In the event tax-exempt bonds are used with Low Income Housing Tax Credits, or any other public funds, the most restrictive rents of the applicable programs shall apply. The affordability of restricted units in relation to the project's market rents will be considered as part of the Housing Commission's approval of the financing. The maximum rent amounts will also apply if the set-aside units are occupied by Section 8 tenants (tenant based vouchers).

In calculating restricted rents, household size/occupancy shall be described in the last paragraph of Section 3.2 above.

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- 3.4 Unit Distribution - The set-aside units must proportionately reflect the mix of all units in the project, be distributed throughout the project and have the same floor area, amenities, and access to project facilities as market-rate units. The objective of the program is to provide a set-aside of units with lower rents, not to create special "low-income sections" within larger developments.
- 3.5 Additional Affordability Restrictions under Restructuring of Existing Bond Issues- Additional public benefit in the form of deeper income targeting; additional rent restrictions; extension of the term of restrictions; additional number of restricted units; or any combination thereof, will be negotiated in connection with refundings or debt restructurings of existing bond issues. The level of additional restrictions will be determined in the context of the overall financial feasibility of each financing. Should the bond restructuring result in an extension of the maturity of the bonds, a minimum of 10% of the units in the project will be set aside for occupancy by households whose incomes do not exceed 50% of area median income, as adjusted for family size, with rents set at the corresponding affordability level, for the term of the restructured bond.
- 4. CREDIT CONSIDERATIONS**
- 4.1 Required Rating on the Bonds - Any bonds issued under the Program that are sold to the public should be rated "A", or its equivalent, or better from one or more of the following nationally recognized rating agencies: Moody's Investors Service, S&P Global Ratings, or Fitch Ratings. The same rating requirement applies in the case of a substitution of existing credit facility for bonds that are outstanding.
- 4.2 Credit Enhancement- A preferred way of obtaining the required rating on the bonds in accordance with Section 4.1 is through the provision of additional, outside credit support for the bond issue provided by rated, financially strong private institutions, such as government sponsored entities (including the Federal National Mortgage Association [Fannie Mae] or the Federal Home Loan Mortgage Corporation [Freddie Mac]), other government insured mortgage programs, or other qualified credit enhancement providers as long as the minimum bond rating is obtained. The rating on such bonds is determined based on the credit worthiness of the participating credit enhancement provider. The project proponent is required to identify and obtain any such credit enhancement. As the primary source of security for the repayment of bonds, the credit enhancement provider reviews and approves the borrower (credit, financial capability, experience, etc.) and the project and its feasibility, including the size of the loan and the terms of repayment, using their own underwriting criteria.
- 4.3 Rated Bonds Without Credit Enhancement- Fixed rate bonds can be issued without credit enhancement if the proposed financing structure results in the required minimum rating on the bonds by a rating agency as provided in Section 4.1. However, bonds issued without credit enhancement will only be sold to qualified institutional buyers ("QIBs") as defined under Rule 144 A of the Securities Act of 1933 and in minimum \$100,000 denominations, unless waived by the CEO in its sole discretion.

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4.4 Privately Placed Bonds - The rating requirement specified in Section 4.1 is waived under the following conditions:

- A. The bonds are privately placed with QIBs, or institutional "accredited investors," as defined in Sections 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, or any entity in which all of the equity owners meet the requirements of at least one such subsection.
- B. The bonds must be sold in minimum \$ 100,000 denominations.
- C. All initial and subsequent purchasers (including purchasers of participation interests in the bonds) must sign a sophisticated investor letter (Investor Letter) in a form approved by the Housing Commission. While the bonds remain unrated, their transferability will be restricted to QIBs or institutional accredited investors who sign an Investor Letter.
- D. Unless otherwise approved by the Housing Commission Board, the bonds may not be held at any time by more than 5 investors.
- E. Upon terms acceptable to the Housing Commission, bonds may be placed in a trust or custodial arrangement with participations sold to investors.
- F. The San Diego Housing Commission through a resolution from the Housing Authority as issuer reserves the right to require that a trustee or fiscal agent participate in privately placed bond transactions.

The purpose of these conditions is to assure that the bonds are placed with investors who are experienced in investing in unrated municipal securities and can conduct their own analysis or real estate credit underwriting. Bond funds and affordable lending financial institutions are the types of entities this condition anticipates.

4.5 Bonds with Hedges/SWAPs. The project proponent shall disclose to the Housing Commission at the time of application of its intention to purchase an interest rate cap, hedge or swap, and such instrument shall be obtained in an arm's length transaction. Under no circumstances shall the Housing Commission or Housing Authority be a party to such swaps or hedges.

4.6 Indemnification. The project owner shall agree to defend and indemnify the Housing Authority against liability related to the bond financing and the project, and agree to reimburse the Housing Authority for all expenses incurred by the Housing Authority in issuing the bonds and monitoring the project. The Housing Commission, through a resolution from the Housing Authority, reserves the right to require a parent company or personal guaranty of such indemnification and expense reimbursement obligations.

5. OTHER ISSUERS

5.1 The Housing Authority, in very limited situations, will allow issuers other than the Housing Authority to issue bonds for multifamily housing projects located within the City of San Diego.

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Any project proponent considering the use of any issuer other than the Housing Authority should contact Housing Commission staff prior to proceeding with the project and obtain written approval for use of an outside issuer. The required City approvals of bond issuances by issuers other than the Housing Authority will be recommended only if the financing proposal is part of a pooled issuance involving projects located in multiple jurisdictions and the project proponent can demonstrate that a pooled issuance is required for the projects to be financial viable. All Housing Authority affordability requirements, procedures and requirements will apply to projects using "outside issuers," including an issuance fee of 0.25 percent of the bond issuance amount to be paid to the Housing Authority upon issuance of the bonds as described in Section 1.8 above. A TEFRA hearing and approval by the City Council of the City ("City Council"), as described in Section 7.4, on behalf of another issuer will include a provision that the owner, operator or manager of the project considered for financing by tax-exempt debt will not change without the prior approval of the Housing Commission's CEO or designee. Units governed by the applicable Bond Regulatory Agreement using tax-exempt financing shall be monitored by Housing Commission staff for compliance with the terms and conditions of the applicable CDLAC resolution annually or as otherwise determined by the Housing Authority and are subject to annual Housing Commission monitoring fees in accordance with the most current Housing Commission fee schedule.

6. SELECTION OF THE FINANCING TEAM

- 6.1 Through separate Requests for Qualifications ("RFQ"), a pool of bond counsels, and a pool of municipal advisors, will be established to serve as financing team participants on individual bond transactions. The RFQ process is a fair and competitive process which includes advertising, a competitive selection process and interviewing, if necessary. Firms will be selected in accordance with the Housing Commission's applicable equal opportunity policies.
- 6.2 The establishment of each pool will be made by a selection committee with the approval of the Housing Commission Board. The selection committee will consist of Housing Commission staff and representatives from other City departments, such as the City Attorney's Office, City Auditor, and Debt Management. Generally, the selection will be made for a one -year period. The term may be extended for four additional one-year periods by the CEO or designee.
- 6.3 The bond counsel and municipal advisor specifically represent the interests and concerns of the Housing Commission, the Housing Authority and the City in ensuring the integrity of the bond transaction. The project sponsor may, at its own expense, add additional members to the finance team to represent its interests.
- 6.4 The municipal advisor for each transaction will be designated by the CEO or designee from the selected pool for approval by the Housing Commission Board based on past performance, experience with similar transactions, and capacity to meet the project deadlines. The municipal advisor will prepare a feasibility study on whether it is economically advisable to proceed with the financing, including: evaluation of the financial strength of the project; assumptions regarding income and expenses; sources of security for bonds in addition to a mortgage on the project; the borrower's financial situation and experience in operating and managing multifamily rental projects; marketability of the bonds; rights and resources of parties to the transaction in the event of default. The municipal advisor will provide financial advice on all relevant issues to best protect the interests of the City and the Housing Authority. The compensation for municipal advisory services to determine whether it is advisable to proceed with a financing will not be payable by the project proponent and will not be contingent on the sale of the bonds.

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- 6.5 Bond counsel will be designated for each financing by the CEO or designee from the selected pool based on past performance, experience with similar transactions, and capacity to meet the project deadlines, subject to approval by the Housing Commission Board. Bond counsel will prepare the necessary legal documentation for the bonds, including provisions regarding compliance with any applicable continuing disclosure requirements, provide an opinion regarding the validity of the bonds and their tax exempt status (if applicable), and provide legal advice on all relevant issues to best protect the interests of the Housing Commission, the City and the Housing Authority, including but not limited to the project monitoring requirements for federal tax State law and CDLAC purposes.
- 6.6 Bond Underwriter /Remarketing Agent/Private Placement Purchaser -The project proponent shall select the construction and permanent lender/bond purchaser and method of selling the bonds for a given transaction, subject to the requirements set forth herein and the approval of the Housing Commission. Except as provided in Section 1.8 above, the Housing Authority will not allow a bond transaction where the tax credit investor is also the bond purchaser or a related party thereto. The practice of allowing the project proponent to propose the lender and bond structure is intended to create an incentive for qualified financial firms to actively work with borrowers to structure and present feasible financing proposals that meet Program requirements.
- 6.7 In the event the project proponent has not identified a proposed financing structure for a given transaction, the Housing Commission will select an underwriter, lender, or private placement purchaser through a request for proposals process.
- 6.8 Any bond trustee or fiscal agent (a financial institution designated by the Housing Authority as the custodian of funds and official representative of bondholders), if required by the Housing Commission as the bond structure for the financing, will be approved by the CEO or designee based upon a request for proposals process.
- 7. THE FINANCING PROCESS**
- 7.1 Application - A project proponent interested in new-money financing must submit an application for bond financing, or in the case of an existing financing a request for bond refunding or restructuring, to the Housing Commission. Part of the required information is a disclosure statement, on each of the parties involved in the developer /ownership entity. Housing Commission staff will review the application for feasibility. The application is found on the Housing Commission's website.
- 7.2 Deposit-At the time of the application, the project proponent must post a \$10,000 application deposit to cover the preliminary costs of the Housing Commission related to the proposed bond issuance, reissuance or restructuring. If the financing proceeds to closing, the deposit may be subject to return after the bond closing. If the bond issue does not proceed to closing, then the \$10,000 application deposit will become nonrefundable, and will be retained by the Housing Commission for payment toward the preliminary costs incurred by the Housing Commission and its consultants. The \$10,000 application deposit may be waived by the CEO or designee.

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- 7.3 Inducement/Reimbursement Resolution- In conjunction with the City Attorney's Office and bond counsel, a bond inducement/reimbursement resolution (hereafter an "inducement resolution") will be drafted and adopted by the Housing Commission pursuant to the authority granted by Housing Authority resolution.. All new money projects must be the subject of an inducement resolution. An inducement resolution is a conditional expression of the Housing Authority's "official intent "to issue bonds for a given project and is required for tax-exempt financing under Treasury Regulation Section 1.150-2(e). Adoption of the inducement resolution establishes, through the public record, the date from which project costs incurred may be determined to be eligible for financing under the Program with proceeds of tax-exempt bonds. Therefore, applicants are encouraged to induce their projects as soon as practicable to clearly identify the project, its location, maximum number of units, the maximum amount of financing, and the proposed ownership entity.
- A. Inducement Resolution - The Housing Authority has granted the CEO of the Housing Commission or designee the authority to adopt bond inducement resolutions.
- B. Application to CDLAC - The inducement resolution also authorizes Housing Commission staff to submit an application to CDLAC, on behalf of the project proponent, for a private activity bond allocation if the bonds are to be tax-exempt.
- C. No Binding Financial Commitment - Adoption of the inducement resolution does not represent any commitment by the Housing Commission, Housing Authority, or the project proponent to proceed with the financing. The adoption by the Housing Authority of an inducement resolution, by itself, does not authorize any subordinate financing by the Housing Commission or any other entity of the City. The Housing Authority retains absolute discretion over the issuance of bonds through adoption of a required resolution authorizing such issuance and approving related bond documents.
- D. No Land Use or Building Code Approval - Adoption of the inducement resolution shall not be construed to signify that the project complies with the planning, zoning, subdivision and building laws and ordinances of the City or suggest that the Housing Authority, the City, or any officer or agent of the Housing Authority or the City will grant any such approval, consent or permit that may be required in connection with the development of a given project.
- 7.4 TEFRA Hearing and Approval - In order for interest on the bonds to be tax-exempt and in accordance with the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), and Section 147(f) of the Internal Revenue Code of 1986, the issuance of bonds must be approved by representatives of the governmental unit with jurisdiction over the area in which the project is located, after a public hearing for which a public notice (describing the proposed location of the project, the number of units, and proposed bond issuance amount) is given. City Council has via a resolution granted the CEO of the Housing Commission or designee the authority to hold the TEFRA hearing and adopt bond inducement resolutions. The Housing Authority's approval shall remain required for final approval and bond authorization. The purpose of the public hearing is to provide an opportunity for interested persons to provide their views on the proposed bond issuance and on the nature and location of the project. The TEFRA hearing will be conducted by the CEO of the Housing Commission or designee at the date and time specified in the TEFRA notice. The TEFRA notice shall be published in a newspaper of general circulation within the City or on the Housing Commission's website at least seven days in advance of the TEFRA hearing.

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- 7.5 Bond Allocation - Prior to the issuance of tax exempt bonds (other than 501(c)(3) bonds), the Housing Authority must apply for, and receive an allocation of bond issuing authority from CDLAC. To receive such an allocation, the Housing Authority and the project proponent must document their readiness to proceed with the bond financing, and must comply with all applicable CDLAC regulations.
- 7.6 Performance Deposit - At the time of the application to CDLAC, the project proponent must deposit with the Housing Authority an amount equal to one half of one percent of the requested allocation amount (or such other amount as may be required by CDLAC) as a performance deposit. The deposit will be returned to the project proponent only in accordance with CDLAC procedures; and the deposit is subject to reversion to CDLAC if the financing does not close under applicable CDLAC regulations.
- 7.7 Local Review- All projects must be in compliance with the City's zoning requirements and adopted community plans. Prior to requesting the Housing Authority approval of a new-money bond issuance, the project must undergo all planning procedures and land use approvals, including discretionary review, community planning group review, and environmental analysis, as required. All projects must be reviewed by the applicable community planning group(s) prior to final bond authorization recommendation by the Housing Commission Board of Commissioners.
- 7.8 Coordination with City Finance Representatives- Housing Commission staff will work with the City Attorney's Office, the City's Debt Management Department, and other City departments, as necessary, in preparing bond issuances for affordable housing projects.
- 7.9 Compliance with City's Disclosure Ordinance - As a related entity of the City, the Housing Commission will adhere to the City disclosure ordinance (0-19320) as it may be amended from time to time, which applies to publicly offered bonds. The Housing Commission will present offering statements and disclosure documents for review and approval, as appropriate, by the City's Disclosure Practices Working Group.
- 7.10 Housing Commission/Housing Authority - Final Approval- Housing Commission staff recommendations to proceed with a proposed bond issuance, reissuance, or bond restructuring will be presented for approval by the Housing Commission. If approved, staff will work with the approved financing team to structure the financing and to prepare the necessary bond documents. The resulting bond documents, authorizing resolution, staff report, and other relevant docket materials will be submitted for final approval by the Housing Authority, a minimum of four weeks prior to the Housing Authority meeting date, at which the adoption by the Housing Authority of a resolution authorizing the issuance of the bonds is to be considered.
- 8. TENANT RELOCATION**
- 8.1 As required by CDLAC regulations (Section 5211"TenantRelocation") if low-income tenants will receive a rent increase exceeding five percent (5%) of their current rent, then a relocation plan is required to address economic displacement. Where applicable, the project proponent shall provide evidence that their location plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act (42 U.S.C. 61).

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9. PROHIBITION OF CERTAIN "SUBSTANTIAL USERS"

9.1 The Housing Commission and Housing Authority, each in its sole and absolute discretion, reserves the right to reject and not issue bonds for proposed projects where, in the proposed financial structure, the proposed bond purchaser is the same entity or a related entity as the project owner(including, but not limited to, tax credit investor limited partners) or involves any other arrangement which may limit the Housing Commission or Housing Authority's ability to charge administrative fees in the amounts detailed in Section 1.8 above, including but not limited to the circumstances described in Section 1.9 above.

10. POST ISSUANCE COMPLIANCE

10.1 Use of Bond Proceeds and Bond-Financed or Refinanced Assets. It is the Housing Commission's policy that the project owner shall be responsible for:

- A. Monitoring the use of bond proceeds and the use of bond-financed or refinanced assets (e.g., facilities, furnishings or equipment) throughout the term of the bonds to ensure compliance with covenants and restrictions set forth in the documents relating to the bonds;
- B. Maintaining records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of bonds, including a final allocation of bond proceeds;
- C. Consulting with bond counsel and other legal counsel and advisers in the review of any contracts or arrangements involving use of bond-financed or refinanced assets to ensure compliance with all covenants and restrictions set forth in the documents relating to the bonds;
- D. Maintaining records for any contracts or arrangements involving the use of bond-financed or refinanced assets as described in 10.2 below;
- E. Conferring at least annually with personnel responsible for bond-financed or refinanced assets to identify and discuss any existing or planned use of bond-financed or refinanced assets, to ensure that those uses are consistent with all covenants and restrictions set forth in the bond documents; and
- F. To the extent that the project owner discovers that any applicable tax restrictions regarding use of bond proceeds and bond-financed or refinanced assets will or may be violated, consult promptly with bond counsel and other legal counsel and advisers to determine a course of action to remediate all nonqualified bonds, if such counsel advises that a remedial action is necessary.

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10.2. Record Keeping Requirement. It is the Housing Commission's policy that the project owner shall be responsible for maintaining the following documents for the term of each issue of bonds (including refunding bonds, if any), plus at least three years:

- A. A copy of the bond closing transcript(s) and other relevant documentation delivered to the project owner at or in connection with closing of the bond issue;
- B. A copy of all material documents relating to capital expenditures financed or refinanced by bond proceeds, including (without limitation) construction contracts, purchase orders, invoices, trustee requisitions and payment records, draw requests for bond proceeds and evidence as to the amount and date for each expenditure of bond proceeds, as well as documents relating to costs paid or reimbursed with bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with bond proceeds, including a final allocation of bond proceeds;
- C. A copy of all contracts and arrangements involving the use of bond-financed or refinanced assets; and
- D. In respect of any investment of bond proceeds or collateral securing the repayment of the bonds, a copy of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee or fiscal agent statements, in connection with any investment agreements, and copies of all bidding documents, if any.

For housing bond financings subject to the requirements of Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), it is the Housing Commission's policy that the project owner shall be responsible for maintaining until the end of the "qualified project period" within the meaning of Section 142(d)(2)(A) of the Code, plus at least three years, a copy of all records evidencing compliance with the requirement of Section 142(d) of the Code, including tenant income verifications, leases and tenant records.

The project owner, in the documents relating to the bonds and/or other documents finalized at or before the issuance of the bonds, shall agree to the foregoing records retention requirements and procedures.

10.3 At completion of the new construction or rehabilitation work, the project owner shall provide to the Housing Commission staff a certification from the project's architect that the project includes all design elements that formed the basis for CDLAC's award of bond allocation points (including but not limited to sustainable building methods and/or energy efficiency elements). Additionally, at or before completion of the new construction or rehabilitation of the project, and in any event prior to conversion of bonds to permanent financing, the project owner shall provide the Housing Commission with the final actual sources and uses of funds in the form of an independent cost certification and shall confirm to the Housing Commission staff that such sources and expenditures comply with all state and federal legal requirements, including the requirements set forth in the tax or arbitrage certificate with respect to tax-exempt bonds.

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- 10.4 Annual Certification of Public Benefits and On-going Compliance - As required by CDLAC regulations, all projects that receive a CDLAC bond allocation and are within an existing regulatory period and/or compliance period, shall be monitored by the Housing Commission staff for compliance with the terms and conditions of the CDLAC allocation resolution. The Housing Commission may choose to hire an outside compliance monitoring firm to assist with such requirements. It is acknowledged that the Housing Authority is required to collect, from the project owner the Certification of Compliance I, Certification of Compliance II, and CDLAC Completion Certificate, for each issuance of bonds, when applicable. The Housing Authority will rely on the information in the Certifications of Compliance I and Certificates of II in completing Applicant Public Benefit forms to CDLAC; however CDLAC may request copies of those forms be submitted to in on a case by case basis.
- A. Annually, on or before February 1 of each year until the expiration of the later of the qualified project period or compliance period under the applicable CDLAC Resolution and Bond Regulatory Agreement, the project owner shall provide a written certification of compliance to the Housing Commission, to confirm that the completed project meets the terms and conditions stated in the CDLAC Resolution.
 - B. The Housing Commission shall review the project owner's certification of compliance and may request supporting documents that evidence compliance as necessary in the sole reasonable discretion of the Housing Commission.
 - C. Annually, no later than March 1 of each year until the expiration of the qualified project period or compliance period under the CDLAC Resolution and Bond Regulatory Agreement, the Housing Commission shall complete and submit to CDLAC the Certification of Compliance I or II For Qualified Residential Rental Projects in such format as required by CDLAC, indicating that the completed project meets the terms and conditions stated in the applicable CDLAC Resolution.
 - D. The project owner is also required to submit IRS Form 8703 annually to the IRS on or before each March 31 as long as the bond are outstanding. Form 8703 provides annual information to the IRS to help them determine whether a project continues to be a qualified residential rental project under section 142(d) of the Internal Revenue Code of 1986, as amended.
 - E. For projects receiving allocation of bond authority from CDLAC after December 31, 2016, CDLAC requires that a review of 20% of all management files associated with federally bond-restricted units either on site or electronically be performed upon project completion and every 3 years thereafter.
 - F. For projects which are not satisfying the terms and conditions stated in the CDLAC Resolution, the Housing Commission will work with CDLAC staff and Housing Commission legal counsel to institute remedial action, as necessary, including an action for specific performance or other available remedy. The Housing Commission may disqualify a bond application from any project owner or member of the development partnership who is not in compliance with CDLAC's Post Issuance Compliance requirements, as determined by the Housing Commission and/or by CDLAC.

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- 10.5 Transfer of Ownership. The Housing Commission reserves the right to approve any voluntary change in ownership of a bond-financed project (i) to another owner, (ii) that results in a transfer of 50% or more of the total equity interests in a project owner, or (iii) that results in a transfer of any general partner or managing member interest in the project owner. Such approval of transfer ownership shall be at the discretion of the Housing Commission subject to any additional requirements set forth in the applicable tax certificate or Bond Regulatory Agreement. The Housing Commission shall review management practices of the proposed transferee's current and previously owned multifamily housing rental properties. Any proposed transferee (including individuals within an ownership) whose currently-owned multifamily housing rental properties have been found by the Housing Commission to have deficiencies that have not been resolved within the time frame prescribed by the City, Housing Authority or Housing Commission or other local government authority, may not assume ownership of, or an ownership interest in, any bond financed project. The Housing Commission may initiate additional inspections to verify findings.
- 10.6 Carryforward Election. With respect to each allocation of tax-exempt private activity bond issue authority to the Housing Authority in a given calendar year for which less than all of the allocation of volume cap was used, the Housing Commission staff shall contact CDLAC requesting confirmation of the amount, if any, of carryforward election the Housing Commission, through a resolution from the Housing Authority, shall make under section 146(±) of the Internal Revenue Code, and the Housing Commission, through a resolution from the Housing Authority, will timely file a Form 8328 with the IRS.
- 10.7 Arbitrage Rebate Compliance. The project owner shall comply with all applicable federal tax laws set forth in the tax or arbitrage certificate and bond documents, including arbitrage rebate compliance. Upon request, the project owner shall provide the Housing Commission with documentation that verifies compliance with federal tax laws set forth in the tax or arbitrage certificate and bond documents, including rebate compliance reports.
- 10.8 Other Required Disclosures. The project owner shall be solely responsible for any and all continuing disclosures under any applicable Securities and Exchange Commission and any Municipal Securities Rulemaking Board (MSRB) rules, requirements and regulations (including but not limited to fixed rate bond issuances with Fannie Mae and/or Freddie Mac involvement).

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Authorized:

DocuSigned by:

 Jeff Davis
 Deputy Chief Executive Officer
 San Diego Housing Commission


 Emily Jacobs
 Executive Vice President, Real Estate
 San Diego Housing Commission

8/10/2021

 Date

8-4-2021

 Date

- History:
- Adopted: 10/16/1989
 - Revised: 6/23/1992
 - Revised: 6/28/1994
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