



EXECUTIVE SUMMARY

HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: September 9, 2021

HCR21-048

SUBJECT: Approval of a Memorandum of Understanding between the City of San Diego, San Diego Housing Commission, Housing Authority of the City of San Diego and the California Housing Finance Agency to Participate in a Tax-Exempt Bond Recycling Program

COUNCIL DISTRICT(S): Citywide

ORIGINATING DEPARTMENT: Real Estate Division

CONTACT/PHONE NUMBER: Colin Miller (619) 578-7429

REQUESTED ACTION:

Authorize the necessary actions to enter into a Memorandum of Understanding between the City of San Diego, a public body, corporate and politic of the State of California; Housing Authority of the City of San Diego, a public body, corporate and politic of the State of California; the San Diego Housing Commission, a public body, corporate and politic of the State of California; and the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California, for the express purpose of participating in a tax-exempt bond recycling program.

EXECUTIVE SUMMARY OF KEY FACTORS:

- Federal law limits how much tax-exempt private activity bond debt a state can issue (Annual State Ceiling) in a calendar year. The limit is determined by a state's population, multiplied by a specified dollar amount and is also known as a volume cap.
- Beginning in 2020, demand for tax-exempt bonds exceeded the California Debt Limit Allocation Committee's (CDLAC) annual bond allocation. As a result, previously non-competitive tax-exempt bonds became competitive.
- Traditionally, an affordable housing project would pay off the majority of its tax-exempt Multifamily Housing Revenue Bonds when the construction phase was completed. At this stage, the bonds are "retired" and no longer available.
- Recycled bonds allow the reuse of volume cap authority that would otherwise be retired after completion of construction.
- Recycling is explicitly allowed under federal law.
- The California Housing Finance Agency (CalHFA) has a large capital investment from Apple and is using a portion of that multimillion dollar investment to purchase and reissue the recycled bonds.
- Due to the shortage of housing for low- and moderate-income individuals and families, the Housing Commission and CalHFA desire to enter into this MOU to permit the City of San Diego, Housing Authority and Housing Commission to participate in the CalHFA Volume Cap Recycling Program.
- Approving this action will not create any financial obligations for the Housing Commission.



REPORT

DATE ISSUED: September 2, 2021

REPORT NO: HCR21-048

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of September 9 2021

SUBJECT: Approval of a Memorandum of Understanding between the City of San Diego, San Diego Housing Commission, Housing Authority of the City of San Diego, and the California Housing Finance Agency to Participate in a Tax-Exempt Bond Recycling Program

COUNCIL DISTRICT: Citywide

REQUESTED ACTION

Authorize the necessary actions to enter into a Memorandum of Understanding between the City of San Diego, a public body, corporate and politic of the State of California; Housing Authority of the City of San Diego, a public body, corporate and politic of the State of California; the San Diego Housing Commission, a public body, corporate and politic of the State of California; and the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California, for the express purpose of participating in a tax-exempt bond recycling program.

STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) recommend that the Housing Authority of the City of San Diego (Housing Authority) and the San Diego City Council (City Council) take the following actions:

Housing Authority:

- 1) Authorize the execution of a Memorandum of Understanding (MOU) between the City of San Diego, the Housing Commission, the Housing Authority, and the California Housing Finance Agency (CalHFA) to participate in a tax-exempt bond recycling program;
- 2) Authorize the Housing Commission's President & CEO, or designee, to modify MOU, if necessary, without further action by the Housing Commission's Board of Commissioners (Board) or the Housing Authority, but only if and to the extent that such changes comply with the terms of the executed MOU and are necessary to fulfill federal and state funding requirements;
- 3) Authorize the Housing Commission's President & CEO, or designee, to take such actions as are necessary, convenient and/or appropriate to implement this approval and delegation of authority by the Housing Commission upon advice of the General Counsel; and
- 4) Authorize the Housing Commission's President & CEO, or designee, to execute all necessary documents and instruments that are necessary and/or appropriate to implement these approvals, in a form and format approved by General Counsel, and to take such actions necessary and/or appropriate to implement these approvals.

September 2, 2021

Authorization of a Memorandum of Understanding between the Housing Commission, Housing Authority, and CalHFA

Page 2

City Council:

Authorize the execution of a Memorandum of Understanding (MOU) between the City of San Diego, the Housing Commission, the Housing Authority, and the California Housing Finance Agency (CalHFA) to participate in a tax-exempt bond recycling program.

SUMMARY

Tax-exempt Multifamily Housing Revenue Bonds, also known as private activity bonds, are an essential resource to finance the creation and preservation of affordable housing. The Housing Commission authorizes the issuance of Multifamily Housing Revenue Bonds to support affordable housing developments. The Housing Authority of the City of San Diego approves these bonds. However, private sources of funds, such as revenue from the development, are used to repay the bonds. The Housing Commission, the City of San Diego and the Housing Authority are not financially liable for these bonds. With these bonds, affordable housing developers are able to obtain below-market financing because the interest income from the bonds is exempt from state and federal taxes.

Federal law limits how much tax-exempt private activity bond debt a state can issue (Annual State Ceiling) in a calendar year. The limit is determined by a state's population, multiplied by a specified dollar amount. The Annual State Ceiling, also known as a volume cap, for California in 2021 is approximately \$4.1 billion.

To issue bonds for a development, the Housing Authority must first submit an application to the California Debt Limit Allocation Committee (CDLAC) for a Bond allocation. Beginning in 2020, demand for tax-exempt bonds exceeded CDLAC's annual bond allocation. As a result, previously non-competitive tax-exempt bonds became competitive.

Traditionally, an affordable housing project would pay off the majority of its tax-exempt bonds when the construction phase was completed. At this stage, the bonds are "retired" and no longer available. Recycled bonds allow the reuse of volume cap authority that would otherwise be retired after completion of construction. Recycling is explicitly allowed under Federal Law through the Housing and Economic Recovery Act of 2008 (Section 3007). CalHFA has a large capital investment from Apple and is using a portion of that multimillion dollar investment to purchase and reissue the recycled bonds.

In response to the housing crisis in the City of San Diego and State of California, CalHFA has established a program to preserve private activity bond volume cap as described in 26 U.S.C. § 146 (Volume Cap) and subsequently recycle this preserved Volume Cap in accordance with 26 U.S.C. § 146(i)(6) (CalHFA Volume Cap Recycling Program).

Due to the shortage of housing for low- and moderate-income individuals and families, the Housing Commission and CalHFA desire to enter into this MOU to permit The Housing Authority of the City of San Diego and The San Diego Housing Commission to participate in the CalHFA Volume Cap Recycling Program that will enable CalHFA to both preserve a portion of the tax-exempt volume cap for bonds initially issued by the Housing Authority and issue new CalHFA Conduit Bonds, including bonds issued using recycled Volume Cap, for affordable housing. CalHFA will, in coordination with San Diego, issue taxable refunding obligations to refund portions of conduit revenue bonds previously issued by the Housing Authority, and will subsequently issue CalHFA Conduit Bonds in part to refund said taxable obligations and to provide financing for projects in accordance with the terms and provisions outlined in the MOU.

September 2, 2021

Authorization of a Memorandum of Understanding between the Housing Commission, Housing Authority, and CalHFA

Page 3

The MOU has been reviewed by the Housing Commission's General Counsel and CalHFA counsel, but while the office of the City Attorney has approved a prior version of the MOU, it has not approved the current version with minor revisions due to time constraints. The current MOU has been changed, after the prior City Attorney approval of the prior MOU. Since the change in the language is actually better for all parties, it is unlikely that the office of the City Attorney will not approve this version. However, it is possible, but not likely, that there will be a slight modification of the MOU. This is the reason for stating in the Housing Commission Board approval that this action will approve the MOU in substantially the current form, subject to subsequent review and approval by the City Attorney, and, if necessary, the Housing Commission's General Counsel and CalHFA counsel.

AFFORDABLE HOUSING IMPACT

The Volume Cap Recycling Program will have a positive impact on future affordable housing developments in the City of San Diego and the State of California, at no cost to the City or residents of San Diego by reissuing bonds to provide low-cost financing to affordable housing developments. Recycling previous bond allocations is an innovative way to issue bonds outside of the \$4.1bn cap, grow the aggregate amount of resources available in California, and provide developers with another financing option.

FISCAL CONSIDERATIONS

Approving this action will not create any financial obligations for the Housing Commission. CalHFA shall pay, in advance, any external legal expenses and costs, including those incurred by the Housing Commission or Housing Authority, associated with preserving the Preserved Bond Volume Cap, by the redemption of previously-issued Housing Authority bonds.

KEY STAKEHOLDERS and PROJECTED IMPACTS

Stakeholders include households with very low, low and moderate income in the City of San Diego, the Housing Commission, the Housing Authority, the City of San Diego, and CalHFA. This action is expected to have a positive impact on the community by preserving private activity bond volume cap that would otherwise be lost.

INDEMNIFICATION

Pursuant to the provisions of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from the indemnifying party's (Indemnitor) acts or omissions in its performance of this MOU without requirement that such liability be paid first by the indemnified party (Indemnitee). In the event of third-party loss caused by negligence, wrongful act or omission of both parties, each party shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed or judicially determined. The provisions of California Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated.

ENVIRONMENTAL REVIEW

This activity is not a project as defined by the California Environmental Quality Act (CEQA) Section 21065 and CEQA Guidelines Section 15378(b)(5), as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental determination (NORA) is not required.

September 2, 2021

Authorization of a Memorandum of Understanding between the Housing Commission, Housing Authority, and CalHFA

Page 4

Processing under the National Environmental Policy Act is not required as no federal funds are involved in this action.

Respectfully submitted,



Colin Miller
Vice President
Multifamily Housing Finance
Real Estate Division

Approved by,



Jeff Davis
Deputy Chief Executive Officer
San Diego Housing Commission

Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at.