

File No. 221204

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee Date January 11, 2023

Board of Supervisors Meeting Date _____

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- Final Draft Declaration of Intent
- MOHCD Bond Process Improvement Fact Sheet
- MOHCD Powerpoint 12/2022
- _____
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- _____
- _____

Completed by: Brent Jalipa Date January 5, 2023

Completed by: Brent Jalipa Date _____

1 [Residential Mortgage Revenue Bonds or Notes - Reimbursement Declarations and TEFRA
2 Approvals]

3 **Resolution delegating limited authority to execute and deliver certificates declaring the**
4 **City’s official intent to reimburse original expenditures for the costs of multifamily**
5 **rental housing projects in the City with proceeds of residential mortgage revenue**
6 **bonds or notes of the City, for purposes of Section 1.150-2 of Title 26 of the Code of**
7 **Federal Regulations; delegating limited authority to execute and deliver certificates**
8 **granting public approval of residential mortgage revenue bonds to finance multifamily**
9 **rental housing projects in the City; and approving certain related matters, as defined**
10 **herein.**

11
12 WHEREAS, The Board of Supervisors of the City and County of San Francisco (“Board
13 of Supervisors”), after careful study and consideration, has determined that there is a
14 shortage of safe and sanitary housing within the City, particularly for low and moderate
15 income persons, and that it is in the best interest of the residents of the City and in
16 furtherance of the health, safety, and welfare of the public for the City to assist in the financing
17 of multi-family rental housing units; and

18 WHEREAS, Acting under and pursuant to the powers reserved to the City under
19 Sections 3, 5, and 7 of Article XI of the Constitution of the State of California and Sections
20 1.101 and 9.107 of the Charter, the City has enacted the City and County of San Francisco
21 Residential Mortgage Revenue Bond Law (City Law), constituting Article I of Chapter 43 of the
22 San Francisco Administrative Code, in order to establish a procedure for the authorization,
23 issuance and sale of residential mortgage revenue bonds by the City for the purpose of
24 providing funds to encourage the availability of adequate housing and home finance for
25

1 persons and families of low or moderate income, and to develop viable communities by
2 providing decent housing, enhanced living environments, and increased economic
3 opportunities for persons and families of low or moderate income; and

4 WHEREAS, In addition, pursuant to Division 31 of the Health and Safety Code of the
5 State of California, and particularly Chapter 7 of Part 5 thereof (State Law), the City is
6 empowered to issue and sell residential mortgage revenue bonds for the purpose of making
7 mortgage loans or otherwise providing funds to finance the development of multifamily rental
8 housing including units for lower income households and very low income households; and

9 WHEREAS, The issuance of such residential mortgage revenue bonds typically
10 requires an allocation of private activity bond volume cap from the California Debt Limit
11 Allocation Committee (“CDLAC”), which in recent years has scheduled the grant of such
12 allocations as few as two times per calendar year; and

13 WHEREAS, Each application to obtain an allocation of private activity bond volume cap
14 for a multifamily rental housing project in the City requires a declaration of the City’s official
15 intent to reimburse original expenditures for the costs of such project with proceeds of
16 residential mortgage revenue bonds or notes of the City (each, a “Declaration”); and

17 WHEREAS, A Declaration can be made by resolution of the Board of Supervisors or by
18 certificate executed by a City official delegated the authority to make such a declaration; and

19 WHEREAS, A Declaration made by certificate of a City official can be obtained more
20 expeditiously than a resolution of the Board of Supervisors, and would streamline the process
21 for obtaining an allocation of private activity bond volume cap from CDLAC, and thus for
22 obtaining financing for affordable housing in the City; and

23 WHEREAS, Section 147 of the Internal Revenue Code of 1986, as amended, provides
24 that the City must grant public approval of residential mortgage revenue bonds the interest on

25

1 which is excluded from gross income for federal income tax purposes (each, a “TEFRA
2 Approval”); and

3 WHEREAS, In certain cases, a TEFRA Approval previously granted must be renewed
4 upon reissuance of such residential mortgage revenue bonds, or upon the passage of one
5 year without the issuance of the bonds for the subject housing project; and

6 WHEREAS, TEFRA Approvals may be made by resolution of the Board of Supervisors,
7 or by certificate of the chief elected executive officer of the governmental unit granting the
8 approval; and

9 WHEREAS, The Mayor of the City is the chief elected executive officer of the City; and

10 WHEREAS, A TEFRA Approval granted by certificate of the Mayor can be obtained
11 more expeditiously than a resolution of the Board of Supervisors, and would streamline the
12 process for issuing and reissuing residential mortgage revenue bonds to finance multifamily
13 rental housing projects in the City; and

14 WHEREAS, Neither a Declaration or TEFRA Approval will bind the Board of
15 Supervisors to (i) issue revenue bonds or notes for any project, (ii) approve a loan for any
16 such project, or (iii) make any expenditure, incur any indebtedness or proceed with any such
17 project; now, therefore, be it

18 RESOLVED, By the Board of Supervisors of the City and County of San Francisco, as
19 follows:

20 Section 1. The Board of Supervisors finds and determines that the foregoing recitals
21 are true and correct.

22 Section 2. The Mayor is hereby authorized to execute and deliver a certificate or other
23 written instrument in the name of and on behalf of the City, without further action of the Board,
24 for any of the following purposes: (i) declaring the City’s official intent to reimburse original
25 expenditures for the acquisition, development, construction, rehabilitation, improvement

1 and/or equipping of a multifamily rental housing project with proceeds of residential mortgage
2 revenue bonds of the City, all for purposes of Section 1.150-2 of Title 26 of the Code of
3 Federal Regulations; and (ii) authorizing the Mayor's Office of Housing and Community
4 Development to prepare and submit an application to CDLAC for an allocation of the State of
5 California's private activity bond volume cap for the financing of multifamily rental housing in
6 the City; provided, however, that the authority granted to the Mayor in this section is expressly
7 limited to the financing of multifamily rental housing in the City that must be approved by the
8 full Board of Supervisors after an allocation of private activity bond volume cap is received
9 from CDLAC. Any such certificate or written instrument may be in such form as the Mayor,
10 with the advice of the City Attorney, may approve, such approval to be conclusively evidenced
11 by the execution and delivery thereof, and such form of certificate or written instrument is
12 hereby expressly authorized to contain such findings, determinations, representations,
13 statements of expectation, ratifications, approvals or other matters as are customarily included
14 in the inducement resolutions of the Board of Supervisors.

15 Section 3. The Mayor is hereby authorized to execute and deliver a certificate or other
16 written instrument in the name of and on behalf of the City, without further action of the Board,
17 to grant approval of the issuance and/or reissuance of tax-exempt residential mortgage
18 revenue bonds to finance and/or refinance any multifamily rental housing project in the City for
19 purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, provided that
20 the authority granted in this Section is limited to instances where approval of such tax-exempt
21 residential mortgage revenue bonds for purposes of said Section 147(f) has been previously
22 received in a resolution duly adopted by the Board of Supervisors that remains in full force
23 and effect at the time of the Mayoral certificate or other written instrument. Any such
24 certificate or written instrument may be in such form as the Mayor, with the advice of the City
25 Attorney, may approve, such approval to be conclusively evidenced by the execution and

1 delivery thereof, and such form of certificate or written instrument is hereby expressly
2 authorized to contain such findings, determinations, representations, statements of
3 expectation, ratifications, approvals or other matters as are customarily included in TEFRA
4 approval resolutions of the Board of Supervisors.

5 Section 4. The officers and employees of the City are hereby authorized and directed,
6 jointly and severally, to do any and all things consistent with this Resolution necessary or
7 advisable to effectuate the purposes of this Resolution, and all actions previously taken by
8 such officers and employees consistent with this Resolution, are hereby ratified and approved.

9 Section 5. This Resolution shall take effect from and after its adoption by the Board of
10 Supervisors and approval by the Mayor.

11

12 APPROVED AS TO FORM:

13

14 DAVID CHIU
15 City Attorney

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17 By: /s/Kenneth D. Roux
18 Kenneth D. Roux
19 Deputy City Attorney

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CITY AND COUNTY OF SAN FRANCISCO
STATE OF CALIFORNIA

Declaration of Official Intent
(Project Name)

_____, 20__

WHEREAS, the City and County of San Francisco, California (the “City”) is authorized and empowered pursuant to the City and County of San Francisco Residential Mortgage Revenue Bond Law (the “City Housing Bond Law”), constituting Article I of Chapter 43 of the San Francisco Administrative Code and/or Division 31 of the Health and Safety Code of the State of California, and particularly Chapter 7 of Part 5 thereof (“State Housing Bond Law” and together with the City Housing Bond Law, the “Housing Bond Laws”), to issue revenue bonds for the purpose of financing or refinancing the acquisition, development, construction, rehabilitation, improvement and/or equipping of multifamily rental housing and for the provision of capital improvements in connection with and determined necessary to that multifamily rental housing; and; and

WHEREAS, [name of general partner] (the “Developer”), on behalf of [if an LP has been formed: {insert name of LP borrower}, a limited partnership, or another ownership entity] [if no LP has been formed: a limited partnership or other ownership entity] to be created by the Developer or an affiliate of the Developer (such limited partnership or other ownership entity being referred to herein as the “Owner”), has requested that the City consider the issuance and sale of tax-exempt residential mortgage revenue bonds (the “Bonds”) pursuant to the Housing Bond Laws for the purpose of lending the proceeds thereof to the Owner to finance the acquisition, development, [construction/rehabilitation - as applicable], improvement and equipping of [description of project including number of units], to be located in the City at [street address of project], and to be owned and/or operated by the Owner (the “Project”); and

WHEREAS, the Owner has requested a declaration of the City’s official intent to reimburse original Project expenditures with proceeds of Bonds of the City at a future date, provided that the City’s requirements for the issuance of such Bonds shall have been satisfied, including the approval thereof by the Board of Supervisors of the City (the “Board”); and

WHEREAS, the City wishes to declare its official intent to reimburse original Project expenditures with proceeds of Bonds of the City at a future date, provided the City’s requirements are satisfied, for the purpose of financing costs of the Project; and

WHEREAS, on _____, 20__, the Board adopted, and on _____, 20__, the Mayor approved, Resolution No. _____, delegating to the Mayor the authority to execute and deliver a certificate or other written instrument in the name of and on behalf of the City, without further action of the Board, for the purposes of (i) declaring the City’s official intent to issue tax-exempt obligations (“Bonds”) to finance multifamily rental housing projects in the City and to reimburse original project expenditures with proceeds of such Bonds, all for purposes of U.S. Treasury Regulations Section 1.150-2; and (ii) authorizing

the Mayor's Office of Housing and Community Development to prepare and submit an application to the California Debt Limit Allocation Committee for an allocation of the State of California's private activity bond volume cap, if determined to be necessary; and

NOW, THEREFORE, for and on behalf of the City, the undersigned hereby states, certifies, finds, determines and declares as follows:

1. The undersigned is familiar with the facts herein certified and is authorized to certify the same on behalf of the City.

2. The undersigned hereby finds and determines that the above recitals are true and correct.

3. The undersigned hereby declares the City's official intent to reimburse original Project expenditures with proceeds of the above-described Bonds, provided that the issuance, sale and delivery of the Bonds shall be subject to the satisfaction of all City requirements. This certificate does not bind the City to make any expenditure, incur any indebtedness, or proceed with the financing of the Project. The Bonds will be payable solely from revenues to be received by the City pursuant to a loan agreement or other agreements to be entered into with the Owner in connection with the Project. The issuance of the Bonds is subject to the following conditions, among others: (a) the City and the Owner shall have first agreed to mutually acceptable terms for the Bonds and of the sale and delivery thereof, and mutually acceptable terms and conditions of the indenture, loan agreement, lease agreement or other agreements and other related documents for the financing of the Project; (b) all requisite governmental approvals for the Bonds shall have been obtained; and (c) a resolution approving the financing documents to which the Bonds will be a party shall have been adopted by the Board.

5. This certificate constitutes a declaration of official intent pursuant to U.S. Treasury Regulation 1.150-2, promulgated under the Internal Revenue Code of 1986, as amended (the "Code"). Based upon the representations of the Owner, the City reasonably expects that certain of the costs of the Project will be reimbursed with the proceeds of the Bonds. The expected maximum principal amount of the Bonds is \$[_____].

6. The Mayor's Office of Housing and Community Development is hereby authorized and directed to take any and all actions as may be necessary or appropriate in connection with an application to the California Debt Limit Allocation Committee for an allocation of the State's private activity bond volume cap under Section 146 of the Code and Section 8869.85 of the Government Code, if determined to be necessary. Any such actions heretofore taken by such office with respect thereto are hereby ratified, approved and confirmed.

London N. Breed, Mayor

EXHIBIT A

NOTICE OF PUBLIC HEARING

MOHCD Bond Process Improvement Resolution

What kind of bonds are we talking about here?

- These are conduit issuances of tax-exempt bonds for affordable housing, which means they put the city under no obligation to make payments of any kind.
- These bonds just create a tax-exemption for the interest on the loans the affordable housing developer gets from a bank. They also qualify the projects for tax credits.
- In order to make the bonds tax-exempt, the City serves as the issuer and brings the bond resolutions before the Board of Supervisors for approval.

What is an inducement?

- Inducement resolutions say that the City is considering issuing bonds for a project – they create no obligations and cannot be acted upon without an Issuance Resolution.
- Inducements just set an initial clock of when bond proceeds can be spent. However, since affordable housing projects have many sources – this not a limiting factor.
- Currently, MOHCD brings inducement resolutions before the board separately from issuance resolutions only because it is a requirement for applications to CDLAC, the state bond agency.

The current process:

- Currently projects bring inducement resolutions to the board before applying to CDLAC. Projects must come to MOHCD at least four months before the CDLAC deadline to apply since we prepare the resolution with the City Attorney and confirm the project meets our standards.
- Projects go to Budget and Finance Committee and then the full Board.
 - This is a procedural item and MOHCD brought **nine** inducement resolutions through this process last year alone.
 - This past year board members asked no questions at any hearing on inducements because these are such procedural items.
- This process uses significant amounts of staff time at MOHCD, the Board, the Mayor's Office and the City Attorney's Office.
 - It can also delay projects by as much as 7 months if they miss a deadline, since the CDLAC applications are competitive and there are only a few rounds a year.
 - These delays could cost a project as much as \$3-4 million in additional costs because of rapidly increasing construction and financing costs.

Proposed process:

- The Board would approve a new resolution that allows the Mayor or MOHCD Director to sign off on these procedural items via an inducement certificate.
- The Board would still have approval over all Issuance Resolutions, which come when the project is actually moving forward. Projects can go through inducement but are ultimately not awarded bonds or developed.
- This new system would speed up the affordable housing development process, reduce project costs, and allow staff to focus on moving our affordable housing pipeline forward faster, while maintaining a clear mechanism for Board review.

Affordable Housing Bond Inducement Process Streamlining

December, 2022



William Wilcox

Mayor's Office of Housing and Community Development

City and County of San Francisco

Goals of new process

- Speed up affordable housing production process
- Avoid cost increases for affordable housing from administrative delays
- Focus staff time on moving projects forward by reducing red tape
- Maintain same level of review and oversight for Board of Supervisors
- Follow industry best practices

What kind of bonds are these?

- Conduit Tax-Exempt Bond Issuances
- No liability or obligations for the city
- City Issues to create tax-exemption
- Bonds allow projects to access Low Income Housing Tax Credits

What's an inducement?



- Resolution setting the earliest date bond proceeds can be spent
 - Doesn't matter for affordable housing because of many sources of funds
- Required by CDLAC before bond application
- Create no obligations to the city and projects may not even move forward

Current Process

- Projects come to MOHCD 4 months before applying to CDLAC
- MOHCD works with City Attorney to draft inducement resolution
- Resolution goes to Budget and Finance Committee and then the full Board
- Procedural item – 9 went to board last year and no questions were received
- Can delay a project up to 7 months if deadline is missed, costing \$3-4 million per project

Proposed Process

- Board approves resolution allowing Mayor or MOHCD Director to sign inducement certificates to apply to CDLAC
- Board still approves issuance resolutions when projects are actually moving forward

Anticipated Outcomes of Changes

- Faster application process for affordable housing projects
- Reduce chances for administrative delays that inflate affordable housing per unit costs
- Focus staff time on moving more projects forward
- Provide same level of Board oversight on projects

Questions?



From: [Conine-Nakano, Susanna \(MYR\)](#)
To: [BOS Legislation, \(BOS\)](#); [ROUX, KENNETH \(CAT\)](#)
Cc: [Paulino, Tom \(MYR\)](#); [Nickolopoulos, Sheila \(MYR\)](#); [Geithman, Kyra \(MYR\)](#); [Wilcox, William \(MYR\)](#); [Gluckstein, Lisa \(MYR\)](#)
Subject: Mayor -- Resolution -- Delegating Reimbursement Declarations and TEFRA Approvals
Date: Tuesday, November 29, 2022 4:39:28 PM
Attachments: [Mayor -- Resolution -- Delegating Reimbursement Declarations and TEFRA Approvals.zip](#)

Hello Clerks,

Attached for introduction to the Board of Supervisors is a Resolution delegating limited authority to execute and deliver certificates declaring the City's official intent to reimburse original expenditures for the costs of multifamily rental housing projects in the City with proceeds of residential mortgage revenue bonds or notes of the City, for purposes of Section 1.150-2 of Title 26 of the Code of Federal Regulations; delegating limited authority to execute and deliver certificates granting public approval of residential mortgage revenue bonds to finance multifamily rental housing projects in the City; and approving certain related matters.

@ROUX, KENNETH (CAT), can you please reply-all to confirm your approval? Thanks!

Please let me know if you have any questions.

Best,
Susanna

Susanna Conine-Nakano
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