


**CITY AND COUNTY OF SAN FRANCISCO**  
**BOARD OF SUPERVISORS**  
**BUDGET AND LEGISLATIVE ANALYST**

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November 18, 2019

**TO:** Government Audit and Oversight Committee  
**FROM:** Budget and Legislative Analyst   
**SUBJECT:** November 21, 2019 Government Audit and Oversight Committee Meeting

**TABLE OF CONTENTS**

| <b>Item</b> | <b>File</b>   | <b>Page</b> |
|-------------|---|-------------|
| 8           | 19-0767 Memorandum of Understanding - Reorganization of the Housing Authority of the City and County of San Francisco - Loan Not to Exceed \$20,000,000 ..... | 1           |

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| <p><b>Item 8</b><br/><b>File 19-0767</b></p>  | <p><b>Department</b><br/>Mayor’s Office of Housing &amp; Community Development</p> |
|   |  |
| <p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution approves (1) the Memorandum of Understanding (MOU) between the City and the Housing Authority in which the City assumes the Housing Authority’s essential functions; (2) approves a loan of \$20 million by the Mayor’s Office of Housing and Community Development (MOHCD) to the Housing Authority; and (3) grants authority to the Mayor and MOHCD to take actions to implement the resolution..</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• In the fall of 2018, the Housing Authority was discovered to have a shortfall of up to \$30 million in the Housing Choice Voucher program. In response, MOHCD provided a forgivable loan to the Housing Authority of up to \$20 million.</li> <li>• The U.S. Department of Housing and Urban Development (HUD) determined in March 2019 that the Housing Authority was in substantial default in the housing voucher and public housing programs. The Housing Authority could remedy the default through the Housing Authority contracting out and the City assuming oversight of the Housing Authority’s essential functions.</li> <li>• The proposed MOU defines the process for the transition of the Housing Authority’s essential functions, including (a) City staff serving as executive management and appointment of an executive director; (b) process to transition Housing Authority functions to City systems; (c) contracting of housing voucher, public housing, and financial functions; (d) budget approval; (e) inventorying of non-housing assets; (f) appointment of the Commission; and (g) process for employees who are terminated.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• The Housing Authority is at risk to continue to have insufficient funds to support its essential functions, discussed in the Budget and Legislative Analyst’s 2019 performance audit, including insufficient funds from HUD to pay all housing voucher costs, which could become a City cost if the City elects to backfill shortfalls in voucher funding. According to the Housing Authority’s financial consultant, potential estimated shortfalls in the housing voucher program between 2019 and 2031 range from \$16 million to \$18 million.</li> <li>• Other Housing Authority risks are severance payments for terminated Housing Authority employees, and continued pension liability. The Housing Authority reserves may not have sufficient funds to cover the full amount of estimated severance payments of \$5 million.</li> <li>• The Housing Authority will continue to have continued responsibility for the unfunded pension and OPEB (other post-employment benefits) liabilities of active and former employees, estimated to be \$61.5 million. The Housing Authority will have sufficient net revenue to pay down the unfunded liability over the next five years, resulting in a net liability of \$40.7 million as of September 30, 2023, but will need sufficient net revenues in future years to pay the remaining liability.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approval of the proposed ordinance is a policy matter for the Board of Supervisors.</li> </ul> |  |

## MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval

## BACKGROUND

### **City's Assumption of the Essential Functions of the Housing Authority**

In the fall of 2018, the San Francisco Housing Authority ("Housing Authority") was discovered to have a shortfall of up to \$30 million in the Housing Choice Voucher program. The U.S. Department of Housing and Urban Development (HUD) determined in March 2019 that the Housing Authority was in substantial default in the housing voucher and public housing programs. According to HUD's March 2019 default notice, HUD had the authority to place the Housing Authority in receivership, taking possession of all or part of the Housing Authority. As an alternative, the Housing Authority could remedy the default through the Housing Authority contracting out and the City assuming oversight of the Housing Authority's essential functions.

The City submitted an initial draft Memorandum of Understanding (MOU) to HUD in April 2019, outlining the preliminary terms of the City's assumption of Housing Authority functions, including restructuring of the Housing Authority and impact on existing Housing Authority staff. The Mayor's Office submitted the final draft MOU to the Board of Supervisors for approval in July 2019. Approval of the MOU required HUD's legal review, comments, and approval, which was granted in November 2019, prior to Board of Supervisors approval.

### **\$20 Loan to Housing Authority**

In response to the \$30 million shortfall in the Housing Choice Voucher program, the Mayor's Office of Housing and Community Development (MOHCD) provided a forgivable loan to the Housing Authority of up to \$20 million,<sup>1</sup> of which the Housing Authority spent \$10.3 million as of September 2019. HUD subsequently allocated \$6.2 million to the Housing Authority to partially repay the loan.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves (1) the MOU between the City and the Housing Authority in which the City assumes the essential functions of the Housing Authority; (2) approves a loan of \$20,000,000 by MOHCD to the Housing Authority; and (3) grants authority to the Mayor and MOHCD to take actions to implement the resolution.

Under the proposed MOU, the Housing Authority will remain a legally-separate entity from the City, and retain responsibility for the housing voucher and public housing programs. Housing

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<sup>1</sup> At the time that MOHCD provided the \$20 million loan to the Housing Authority, MOHCD did not submit these loans to the Board of Supervisors for approval. On advice of the City Attorney's Office, MOHCD revised their policy to submit loans and other agreements to the Board of Supervisors in conformance with City Charter Section 9.118.

voucher, public housing, and other functions will be contracted to third party providers. The City will have oversight over certain Housing Authority actions, as described below.<sup>2</sup>

### **Memorandum of Understanding**

#### *Executive Management and Shared Services*

- The City will provide executive management staff to the Housing Authority, including a chief executive officer reporting to the Mayor or the Mayor's designee under a services agreement. The executive management staff will support the Housing Authority's Board of Commissioners under the services agreement.
- The Housing Authority will integrate with City services over time, including information technology, human resources, purchasing, real estate, financial systems, and other services. The timing and process of integration will be developed in consultation with MOHCD, Controller, and General Services Agency.

#### *Administration and Oversight*

- The annual Housing Authority budget will be submitted to the Mayor and the Board of Supervisors for review, consistent with City procedures and HUD timelines and requirements, and in consultation with the Controller, Mayor's Budget Office, and the Board of Supervisors Budget and Legislative Analyst's Office. The Board of Supervisors will retain its authority under the San Francisco Charter to review, amend, and adopt any proposed allocation of City funds and positions to support the Housing Authority.
- As part of the annual budget submission, the Housing Authority will submit a list of (1) contracts that are expected to be extended or authorized in the budget year that have a term of more than 10 years, have expenditures of more than \$10 million, or generate revenue of more than \$1 million; and (2) contract modifications to these contracts of more than \$500,000. The Housing Authority will continue to be subject to HUD contracting requirements.
- Administration of the Housing Choice Voucher program and public housing will be contracted to third parties as required by HUD. The Housing Authority will work with the City to procure third-party contractors, but the contracting process must conform to HUD requirements. Contracts for non-housing property sales with a market value of more than \$200,000, and property leases with a market value of more than \$60 per square foot will be subject to third-party appraisal with the exception of properties conveyed for development of affordable housing.
- Financial management of the Housing Authority will be contracted to a third party with expertise and experience in HUD financial reporting and requirements. Currently, the Housing Authority contracts with BDO USA LLP for financial management and reporting.
- Issuance of debt by the Housing Authority must be approved by the Authority and the Board of Supervisors.

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<sup>2</sup> The Mayor's Office provided a revised copy of the proposed MOU to the Budget and Legislative Analyst's Office. This report is based on the revised MOU.

- Any material amendments to the MOU are subject to prior approval by the Board of Supervisors.

#### *Housing Authority Commission*

- The Housing Authority Commission is authorized by State law to have seven members, appointed by the Mayor, two of whom must be Housing Authority residents. Under the proposed MOU, the Mayor would appoint four members directly, and three members recommended by motion at the sole discretion of the Board of Supervisors. Of the Mayor's four appointments, at least one must be a Housing Authority resident. Of the Board's three appointment recommendations, at least one must be a Housing Authority resident 62 years of age or older.

#### *Non-Housing Assets*

- The Housing Authority will (a) inventory non-housing assets, including the building at 1815 Egbert Street, vehicles, and other assets; (b) identify which assets are needed for ongoing operations; and (c) plan disposition of surplus assets in accordance with HUD requirements. Loans made by the City to the Housing Authority will be repaid from surplus funds from the disposition of assets, subject to HUD requirements.

#### *Housing Authority Employee Transitions*

- The Housing Authority is responsible to give notices to labor unions employees affected by the contracting out of housing voucher and public housing functions. The City and Housing Authority will coordinate in (a) assisting Housing Authority employees to access City employment, and (b) developing severance packages for employees who are laid off.

#### **Loan Agreement**

The proposed resolution retroactively approves the November 2018 loan agreement between MOHCD and the Housing Authority for up to \$20 million to partially close the \$30 million shortfall in the Housing Choice Voucher program.<sup>3</sup> Source of funds for the loan is the City's Housing Trust Fund, approved by the City voters in 2012. The loan is 0 percent interest with a 55-year maturity date.

According to the loan documents, in order to close the \$30 million shortfall, the Housing Authority was to (a) obtain permission from HUD to use Housing Authority reserves, and (b) request supplemental funds from HUD. According to the Budget and Legislative Analyst's September 2019 Performance Audit of the City's Assumption of the Essential Functions of the Housing Authority, HUD authorized the use of \$5 million in Housing Authority reserves and committed up to \$10 million in supplemental HUD funding. As noted above, as of September 2019, the Housing Authority accessed \$10.3 million in loan funds, and had received \$6.2 million from HUD to partially repay the loan, and has allocated additional funding to cover 2019 shortfalls.

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<sup>3</sup> The loan agreement allows the Housing Authority to use loan funds not needed for closing the shortfall in the Housing Choice Voucher program to be used for HOPE SF costs, subject to City approval.

**FISCAL IMPACT**

Under the proposed MOU, most Housing Authority functions will be contracted to third parties. Public housing has been or will be transferred to qualified housing providers through HOPE IV, HOPE SF, Rental Assistance Demonstration (RAD), and other programs. Housing voucher functions have been contracted to a third party subsequent to the submission of the Budget and Legislative Analyst's performance audit report. Financial and asset management were previously contracted to third parties. These Housing Authority functions will continue to be funded by HUD.

The City faces risks that the Housing Authority continues to have insufficient funds to support its essential functions, discussed in the Budget and Legislative Analyst's 2019 performance audit. The Housing Authority could have insufficient funds from HUD to pay all housing voucher costs, which could become a City cost if the City elects to backfill shortfalls in voucher funding. According to MOHCD in response to the performance audit, HUD had indicated that funding for housing vouchers would be sufficient in 2019. According to the Housing Authority's financial consultant, potential estimated shortfalls in the housing voucher program between 2019 and 2031 range from \$16 million to \$18 million.

Other potential financial risks are severance payments for terminated Housing Authority employees, and continued pension liability. The estimated severance payments were up to \$5 million, which were intended to be paid from Housing Authority reserves, but reserve estimates at the time of the 2019 performance audit report were not sufficient to cover the full severance payment estimate.

The Housing Authority will continue to have continued responsibility for the unfunded pension and OPEB (other post-employment benefits) liabilities of active and former employees, estimated to be \$61.5 million. The Housing Authority will have sufficient net revenue to pay down the unfunded liability over the next five years, resulting in a net liability of \$40.7 million as of September 30, 2023, but will need sufficient net revenues in future years to pay the remaining liability.

**POLICY CONSIDERATION**

The Budget and Legislative Analyst's September 2019 Performance Audit of the City's Assumption of the Essential Functions of the Housing Authority contained several recommendations pertinent to the proposed MOU. The proposed MOU addresses some of these recommendations as discussed below.

*Board of Supervisors Oversight*

We recommended in the performance audit report (recommendation no. 4) that the City negotiate with HUD on the Housing Authority's accountability to the Board of Supervisors in conformance to the City Charter and Administrative Code. As noted above, under the proposed MOU, the Housing Authority will submit the annual budget to the Board of Supervisors each year for review; to the extent that the City allocates funds or City staff to the Housing Authority, these funds and staff positions are subject to Board of Supervisors

approval consistent with the City Charter and Administrative Code. Also, while Housing Authority contracting procedures and contracts are subject to HUD requirements, the Housing Authority will submit a list of contracts, which meet the thresholds set by City Charter and discussed above, to the Board of Supervisors each year as part of the budget submission.

#### *Governance*

The proposed MOU defines the process for selecting the seven-member Commission, as noted above. We recommended codifying this process in the City's Administrative Code (recommendation no. 5). The MOHCD Acting Director and Transition Team Leader disagreed with this recommendation in their written response to the performance audit report, stating that that the Mayor has sole authority under State law to appoint the Housing Authority Commission. If the Board of Supervisors approves the proposed MOU, we consider the process to select the Commission, as defined in the MOU, to be consistent with State law in that it retains the Mayor's authority to appoint the seven-member Commission, while allowing the Board of Supervisors to recommend to the Mayor the appointment of three of the seven members.

#### *Executive Management*

Under the proposed MOU, the City staff will serve as executive management of the Housing Authority, including an executive director reporting to the Mayor or her designee. We recommended that the City hire an executive director as a priority (recommendation no. 6).

#### *Non-Housing Assets*

The proposed MOU provides for Housing Authority staff that are retained to be located in City space, if available, and for a plan to dispose the Housing Authority's non-housing assets. As part of this plan to dispose of non-housing assets, we recommended that the Director of Real Estate evaluate the potential use by the City of the Housing Authority's property at 1815 Egbert Street (recommendation no. 7).

#### *City Systems and Shared Services*

According to the proposed MOU, the Housing Authority will integrate with City services over time, including information technology, human resources, purchasing, real estate, and financial systems. The timing and process of integration will be developed in consultation with MOHCD, Controller, and General Services Agency. In our audit report, we recommended that the Housing Authority transition to the City's financial system following completion of the transition, and that the Controller have the same authority over the Housing Authority as over City departments (recommendations no. 11 and 12). The MOCHD Acting Director and Transitions Team Leader disagreed with these recommendations in their written response to the performance audit report, but we continue to make these recommendations, which support the transition plan as described in the MOU.

### **RECOMMENDATION**

Approval of the proposed resolution is a policy matter for the Board of Supervisors.