



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Scott P. Johnson
Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: March 7, 2011

Approved

Date

3-10-11

COUNCIL DISTRICT: 4

SUBJECT: TAX-EXEMPT MULTIFAMILY REVENUE BONDS TO ACQUIRE AND REHABILITATE ELENA GARDENS APARTMENTS – TEFRA HEARING

RECOMMENDATION

It is recommended that the City Council:

1. Hold a Tax Equity and Fiscal Responsibility Act (“TEFRA”) public hearing for the issuance of up to \$23,000,000 of tax-exempt private-activity bonds by the California Municipal Finance Authority (“CMFA”) for the acquisition, rehabilitation and improvement of the 168-unit Elena Gardens Apartments affordable housing project, located at 1900 Lakewood Drive, San José, CA (the “Project”).
2. Adopt a resolution approving the issuance of Tax-Exempt Revenue Bonds by CMFA in an aggregate principal amount not to exceed \$23,000,000 to be used to finance the Project and pay certain expenses incurred in connection with the issuance of the bonds.

OUTCOME

Approval of the recommended actions will contribute to securing the financing necessary to complete necessary rehabilitation and energy efficiency improvements at this 38-year-old apartment complex.

BACKGROUND

EAH Housing, Inc. (the “Sponsor”), a California nonprofit benefit corporation has requested that the CMFA issue tax-exempt bonds (the “Bonds”) in an aggregate principal amount not to exceed \$23,000,000. Proceeds of the Bonds are to be made available to allow a limited partnership or a limited liability company to be established by EAH to finance the acquisition, rehabilitation and improvement of the Project.

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Under this proposal, CMFA will assume full responsibility for bond issuance, administration and on-going compliance. Aside from tax-exempt bonds, the Sponsor proposes the following sources of revenue for the Project: federal 4% Low-Income Housing Tax Credits; State Tax Credits; and a seller take-back note. There is no current City loan on the Project and none is proposed in the subject transaction.

The City's Policy for the Issuance of Multifamily Housing Revenue Bonds ("Policy") requires that the City be the issuer of tax-exempt private-activity bonds for projects located within San José. An exception to the Policy allows the City to authorize another entity to issue the bonds if the project sponsor is seeking the issuance of bonds to finance other projects in the same round of bond allocations from the California Debt Limit Allocation Committee ("CDLAC") and the City is not making a loan or grant to the project. Since EAH is also proposing tax-exempt bonds for an affordable housing project in Union City in the same CDLAC round and there are no City loans or grants, the Finance and Housing Departments jointly recommend that the Elena Gardens Apartments refinancing be approved under that exception to the Policy.

Elena Gardens Apartments was built in 1973 with financing from the Section 236 housing development program offered at that time by the U.S. Department of Housing and Urban Development ("HUD"). It consists of 168 units in ten two- and three-story buildings containing a mix of one-, two- and three-bedroom units. It was acquired 1995 by Elena Gardens Homes, Inc., ("EGH"), a nonprofit affiliate of EAH Housing, Inc. ("Sponsor"), which assumed the Section 236 loan. This loan and a second mortgage in the form of a 1995 tax-exempt bond issued by the Housing Authority of the County of Santa Clara will be paid off as part of the contemplated transaction. The funding will allow for substantial rehabilitation of the units including the addition of energy-efficiency improvements and the renovation of nine units to make them fully accessible.

The proposed rehabilitation project will result in a mix of units affordable to families at 30%, 40% and 50% of Area Median Income. For the two-bedroom units, for example, these income limits translate into maximum annual incomes for three-person households of \$27,950, \$37,275 and \$46,600, respectively.

ANALYSIS

The federal tax law, known as the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") requires that projects funded with qualified tax-exempt private activity bond proceeds be approved by the City Council after a noticed public hearing, called a "TEFRA hearing." A qualified private activity bond is a bond issued to fund a project for a private entity but meets certain requirements under the Internal Revenue Code (the "Code") in order for the interest received by the bondholder to be excluded from gross income for federal income tax purposes. These hearings provide interested individuals or parties the opportunity to comment on any matters related to such potential bond issues, including the nature and location of the project.

The TEFRA Hearing is scheduled to be held as part of the action items on the March 29, 2011 Council Agenda and serves as a method of notifying the community of CMFA's intent to issue

tax-exempt private activity bonds for the Project. The public hearing notice will be published in the *San Jose Mercury News* on or about March 11, 2011, announcing the time and location of the public hearing.

Federal tax law limits the types of projects that may be funded with tax-exempt bond proceeds since the interest earned on such bonds is exempt from federal taxation. Pursuant to the Code, the issuance of the Bonds by CMFA requires the City's approval because the Project is located within the territorial limits of the City. In order for the interest on the Bonds to be excluded from the gross income of the owner of the Bonds (i.e. tax-exempt), an "applicable elected representative" of the government unit must approve the issuance of the Bonds after the TEFRA hearing. The City Council's approval of the issuance of the Bonds and the use of the proceeds serves to meet the applicable Code requirements. The City Council's approval is not approval of the Project for any other purpose.

PUBLIC OUTREACH

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The actions recommended in this report do not meet any of the above criteria. Nonetheless:

1. A public hearing notice regarding the TEFRA hearing to be held as part of the actions recommended in this report is scheduled to be published in the *San Jose Mercury-News* on or about March 11, 2011.
2. This report will be posted to the agenda website for the City Council's March 29, 2011 meeting.

COORDINATION

This memorandum has been prepared in coordination with the City Attorney's Office.

COST IMPLICATIONS

The TEFRA hearings will have no fiscal impact on the City as there are no City funds in this Project. The tax-exempt bonds issued by CMFA will be secured solely by the Project's revenues.

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CEQA

Categorically Exempt, File No. PP11-038.


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