
June 9, 2022

Agenda Item 10.a.

Welfare Tax Exemption Preservation Program; Recommended CEQA Determination: Exempt Pursuant to CEQA Guideline 15061(b)(3)

Subject:

Adoption of Resolution No. 16 approving the creation of a Welfare Tax Exemption Preservation Program (Program) to assist housing developers secure a welfare tax exemption necessary to create and preserve permanently affordable housing

Background:

The California Legislature has the authority to exempt property from taxation if it is used exclusively for charitable purposes (among other reasons) and if it is owned or held in trust by nonprofit organizations operating for those purposes. This exemption was first adopted by voters as a constitutional amendment in 1944 and is known as the “welfare exemption”. California’s statutory requirements for the welfare exemption are contained in Revenue and Taxation Code (R&T) Section 214. Subpart (g) provides the terms by which rental housing dedicated to occupancy by low- and moderate-income households qualifies for the exemption.

For the purpose of converting existing, unrestricted rental housing to affordable housing that is welfare exempt, R&T Section 214(g) requires: 1) building ownership by a charitable organization; 2) an income cap of 80% of area median income (AMI) for occupants of designated units; 3) a financial investment of public sector funds; and 4) recordation of a deed restriction by a public agency memorializing the occupancy restrictions.

BAHFA now seeks to create the Welfare Tax Exemption Preservation Program (Program) to help affordable housing developers convert existing, unrestricted rental housing to permanently affordable housing. By providing a de minimis financial contribution and a recorded occupancy restriction, developers can meet the Section 214(g) tests and qualify for the exemption. This enables them, in turn, to offer below-market rents to households earning 80% of AMI and below while still maintaining quality habitability standards.

Program Terms:

The California Board of Equalization (BOE) will currently accept a minimum public sector investment of \$5,000 when it is accompanied by a deed restriction to satisfy the public sector actions necessary for the welfare exemption. Because this investment value is low, the number of buildings that can be preserved under the Program will be small – most preservation projects require significantly higher subsidies to complete necessary rehabilitation work. Nonetheless, the Program can still protect tenants, prevent displacement, and create newly affordable housing – all of which is worthwhile, even if the scale is small. In addition, the amount of staff time required to execute the agreements and enforce the deed restrictions is also very low. All enforcement actions will happen through the BOE and the county assessor’s office in which an assisted project is located. The benefits of the Program will outweigh the implementation burden.

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A Welfare Tax Exemption Preservation Program Term Sheet is provided as Attachment A.

Term Sheet highlights include:

Program Goals: To prevent displacement of low-income households; to create a permanently affordable housing stock that provides safe, decent, stable residencies for working households; and to promote neighborhood vitality.

Eligible Applicants: Developers that meet the requirements of R&T Section 214 and have a demonstrated track record of successfully developing, owning, and operating comparable projects.

Eligible Projects: Occupied rental buildings with 4 or more legal dwelling units.

Regulatory Term: 55 years, unless the developer requests a shorter term that facilitates continued affordability.

Displacement: Prohibited.

Rent Stabilization and Just Cause Eviction Requirements: Buildings located in jurisdictions with rent stabilization or just cause ordinances in place must continue compliance with those ordinances.

BAHFA Financial Contribution: The minimum contribution the California BOE will accept to establish the welfare exemption, currently \$5,000, may be granted to approved projects.

Delegated Approval Authority:

Staff recommends that the BAHFA Board delegate approval authority to the MTC Executive Director for BAHFA's execution of deed restriction agreements and grant agreements in the amount that meet the BOE minimum for projects that meet the requirements of the Welfare Tax Exemption Preservation Term Sheet. The delegation of authority, rather than requiring each proposed transaction to seek a BAHFA Oversight Committee referral and BAHFA Board approval, will enable BAHFA to work within the constraints developers face when purchasing properties on the open market. Many property sellers require a 60- or 90-day closing period. Scheduling Committee and Board meetings within the typical sale due diligence period is not possible.

Additional reasons for allowing the delegation of approval authority to MTC's Executive Director are as follows:

- BAHFA's financial investment is of a de minimis value.

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- The contract documents BAHFA will use for the Program will be standardized and apply universally to all transactions, except for the basic facts of the developer and the building description.
- If developers do not lease welfare exempt units to income-eligible households, the developer will face a financial consequence enforced by the BOE and county assessor: the re-imposition of a property tax obligation.
- The Program will not diminish any existing tenant protections in place, such as rent stabilization and just cause eviction regulations. The Program will thus eliminate displacement risk and provide stability for existing tenants while creating new below-market opportunities for future tenants.
- The Program's focus on mission-driven partners; 55-year restriction term; requirement of below-market rent levels; and layering of tenant protections eliminate incentives that would attract developers looking to prioritize profit over protections.

Note that if a developer came forward with a request for a financial investment and/or deed restriction that did not comply with the Program's Term Sheet but that staff believed was worthy of consideration, staff would follow normal approval protocols and seek to place that request on the Joint Committee and BAHFA Board calendars.

Delegated Term Amendment Authority:

Staff also recommends delegation of authority to the MTC Executive Director for approval of an amendment to the term of the occupancy restriction when the developer seeks such amendment for the purpose of extending the affordability period or otherwise protecting the tenants and ensuring continued affordability.

For example, Developers may seek to purchase buildings and hold until they can finance a substantial rehabilitation project with low-income housing tax credits (LIHTC) or another source of subsidy. In that case, the LIHTC regulatory agreement would extend and supersede the BAHFA regulatory agreement and render the BAHFA restrictions redundant.

When done to facilitate continued affordability, a term amendment can be considered administrative in nature.

Additional Preservation Benefits:

For all projects that come forward under the Program, BAHFA staff will work with BayREN staff to encourage building owners to implement energy efficiency upgrades. This layering of assistance should further reduce operating expenses and result in a more habitable, more affordable building. Successfully combining these efforts will achieve multiple Plan Bay Area 2050 goals at once: green house gas reductions; advancement of the Equity Platform; and affordable housing preservation.

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Environmental Review:

Creation of this program is exempt from environmental review pursuant to CEQA Guideline 15061(b)(3), the “common sense exemption”. CEQA Guideline 15061(b)(3) applies where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” Here, the purpose of the Program, and actions taken to implement the Program, are to preserve existing conditions for naturally occurring affordable housing, and therefore, there is no change to the environment. Furthermore, the preservation of existing conditions mitigates against the ongoing housing crisis, by reducing the possibility that low-income households would be displaced through unregulated rent increases due to market conditions. Accordingly, the Program is exempt from further CEQA review.

Issues:

None.

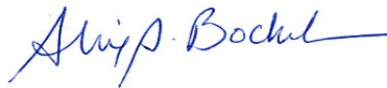
Recommended Action:

The BAHFA Oversight Committee is requested to recommend Bay Area Housing Finance Authority adoption of Resolution No. 16 approving the creation of a Welfare Tax Exemption Preservation Program (Program) to assist housing developers secure a welfare tax exemption necessary to create and preserve permanently affordable housing.

Attachment:

- A. Welfare Tax Exemption Preservation Term Sheet
- B. BAHFA Resolution No. 16
- C. Presentation

Reviewed:



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