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June 9, 2022

Agenda Item 9.a.

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BAHFA Nonprofit Public Benefit Corporation

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**Subject:**

Adoption of Resolution No. 15 approving the creation of and appointment by BAHFA of board members to an affiliated California nonprofit public benefit corporation incorporated for the purpose of receiving funds to facilitate the mission and mandate of the Bay Area Housing Finance Authority

**Background:**

The San Francisco Bay Area Regional Housing Finance Act (California Gov. Code, sec. 64500, et seq.), gives BAHFA the authority to “solicit and accept gifts, fees, grants, loans and other allocations from public and private entities”. It also gives BAHFA the “express or implied powers necessary to carry out the intent and purposes of the [legislation].” Based on these statutory provisions, and through its use of MTC staff under Gov. Code sec. 64520(i), BAHFA can direct the creation of a nonprofit. The purpose of the nonprofit would be to carry out the clear intent of the legislation: to accept gifts, fees, grants, loans and other allocations to expend on activities in furtherance of BAHFA’s authorized activities. Such a purpose of a nonprofit would qualify for nonprofit, tax exempt status under IRC 501(c)(3) as lessening the burden on government.

**Nonprofit Corporation Organizational Elements:**Membership and Brown Act Considerations

Under Government Code section 54952(c)(1), the Ralph M. Brown Act (Gov. Code § 54950, et seq.) will apply to the board meetings for a nonprofit created to facilitate BAHFA’s activities.

Accepting Brown Act applicability, and in the interest of streamlining decision making for the nonprofit, given its restricted purpose and scope, it is recommended that the proposed nonprofit’s board of directors consist of three people, one of which should be BAHFA’s Director. Staff recommends that the BAHFA Board appoint two of its members to the proposed BAHFA-affiliated nonprofit. The BAHFA Board members would serve on the board of the proposed nonprofit for their term in office.

Incorporation

The MTC General Counsel’s office and other staff will work with outside counsel to file Articles of Incorporation with the California Secretary of State and create the required organizational documents, such as by-laws. Once the initial organizational documents are filed with the State, the proposed nonprofit’s board of directors would meet to assume responsibility for the organization’s activities, which will include filing state and federal applications for tax-exempt status. The proposed nonprofit will also need to execute certain agreements, such as a funding agreement between the nonprofit and BAHFA to enable BAHFA’s receipt of gifts, fees, grants,

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etc., and an agreement between MTC and the nonprofit where MTC agrees to provide staffing services to the nonprofit.

Once tax-exemption is approved for the nonprofit, it will apply retroactively to the date of incorporation. It is therefore recommended that incorporation proceed as quickly as possible in order to enable receipt of philanthropic grants. Donors can benefit from tax deductions once retroactivity is applied. BAHFA is currently working with at least one major donor who requires investment through a public benefit corporation, so it is important to advance this work quickly.

**Issues:**

None.

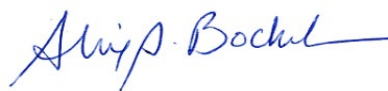
**Recommended Action:**

The BAHFA Oversight Committee is requested to recommend Bay Area Housing Finance Authority adoption of Resolution No. 15 approving the creation of and the appointment by BAHFA of board members to an affiliated California nonprofit public benefit corporation incorporated for the purpose of receiving funds to facilitate the mission and mandate of the Bay Area Housing Finance Authority.

**Attachment:**

- A. BAHFA Resolution No. 15
- B. Presentation

**Reviewed:**



Alix Bockelman

Date: June 22, 2022  
Referred By: BAHFA

ABSTRACT

Resolution No. 0015

This resolution approves the creation of and the appointment by BAHFA of board members to an affiliated California nonprofit public benefit corporation incorporated for the purpose of receiving funds to facilitate the mission and mandate of the Bay Area Housing Finance Authority.

Further discussion of this subject is contained in the Summary Sheet dated June 9, 2022, for the Joint Meeting of the ABAG Housing and BAHFA Oversight Committees.

Date: June 22, 2022  
Referred By: BAHFA

RE: BAHFA-Affiliated California Nonprofit Public Benefit Corporation

BAY AREA HOUSING FINANCE AUTHORITY

RESOLUTION NO. 0015

WHEREAS, the San Francisco Bay Area Regional Housing Finance Authority Act (Government Code Sec. 64500, et seq.) sets forth the terms and responsibilities of the Bay Area Housing Finance Authority (BAHFA), a public body created to address regional housing needs by California Assembly Bill 1487 (Chiu, 2019); and

WHEREAS, BAHFA's enabling legislation gives it the authority to "solicit and accept gifts, fees, grants, loans and other allocations from public and private entities" and also gives BAHFA the "express or implied powers necessary to carry out the intent and purposes of the [legislation];" and

WHEREAS, as authorized under Gov. Code Sec. 64500, BAHFA seeks to direct the creation of a California nonprofit public benefit corporation for the purpose of accepting funds that will assist in fulfillment of its mandate; and

WHEREAS, because the nonprofit is created to facilitate BAHFA's activities, Government Code Sec. 54952(c)(1), the Ralph M. Brown Act (Gov. Code Sec. 54950, et seq.) will apply to board meetings; and

WHEREAS, the recommended nonprofit board membership is three people, comprised of the Director of BAHFA and two members appointed by the BAHFA Board,

NOW, THEREFORE, BE IT RESOLVED, that the Bay Area Housing Finance Authority hereby approves the creation of an affiliated California nonprofit public benefit corporation for the purpose of receiving funds to facilitate the mission and mandate of the Bay Area Housing Finance Authority; and be it further

RESOLVED, that the Bay Area Housing Finance Authority shall appoint [FILL IN THREE NAMES AND/OR POSITIONS] to serve as board members to the affiliated California nonprofit public benefit corporation created to facilitate the mission and mandate of the Bay Area Housing Finance Authority; and be if further

RESOLVED, that this resolution shall be effective upon adoption.

BAY AREA HOUSING FINANCE AUTHORITY

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Alfredo Pedroza, Chair

The above resolution was entered into by the Bay Area Housing Finance Authority at a duly called and noticed meeting held in San Francisco, California and at other remote locations, on June 22, 2022.

**ATTACHMENT**

Summary of BAHFA Affiliated California Nonprofit Public Benefit Corporation, June 9, 2022,  
Joint Meeting, ABAG Housing and BAHFA Oversight Committees