

Bay Area Housing Finance Authority BAHFA

June 22, 2022

Agenda Item 9a

BAHFA 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:

A full Term Sheet for the Program is provided as Attachment B. 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 and Amendment 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.

Note that if housing providers bring project proposals forward that meet BAHFA's threshold goals of anti-displacement and the creation of new affordable housing opportunities but that deviate from the Term Sheet terms, BAHFA staff can and will present those opportunities to the ABAG Housing/BAHFA Oversight Joint Committees and BAHFA Board for individual consideration.

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. When done to facilitate continued affordability (e.g., through a low-income housing tax credit transaction), a term amendment can be considered administrative in nature.

Next Steps:

With the BAHFA Board's approval of the Program, staff will begin outreach to mission-driven developers interested in preserving existing housing to alert them of this resource.

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 identified.

Recommendations:

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

Attachments:

- Attachment A: Resolution No. 16
- Attachment B: Welfare Tax Exemption Preservation Program Term Sheet
- Attachment C: Presentation



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