

Bay Area Housing Finance Authority Board

June 26, 2024

Agenda Item 7.c.

Affordable Housing General Obligation Bond in an Amount Not to Exceed \$20 Billion

Subject:

A request that the Authority adopt Resolution No. 0034 to make certain findings in support of; to call for the election to submit a ballot measure for a general obligation bond for affordable housing in an amount of \$20 billion to the voters of the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano and Sonoma and the city and county of San Francisco (the “Nine Bay Area Counties”); to consolidate the election at the November 2024 general election; and to authorize staff to take actions related, necessary, or incidental to carrying out the intent of this resolution; Cal. Const. Art. XXXIV Authority: up to 90,000 units

Authority to Place a Ballot Measure on the Ballot

The San Francisco Bay Area Regional Housing Finance Act, codified at California Government Code Section 64500, *et seq.* (the “Act”) authorizes the BAHFA Board, subject to the initial approval of the ABAG Executive Board as the Executive Board to the Bay Area Housing Finance Authority (“Executive Board”), to place a measure on the ballot to raise revenue and allocate funds for affordable housing. At its January 25, 2024, meeting, the BAHFA Advisory Committee adopted a resolution, formally recommending that the BAHFA Board and Executive Board adopt the resolutions necessary to submit a ballot measure that conforms to ACA 1 to the voters at the November 2024 election.

At its April 18, 2024, meeting, the Executive Board adopted Resolution No. 06-2024 (Attachment A), initiating the process to submit a ballot measure for an affordable housing general obligation bond to the voters of the Nine Bay Area Counties. The Executive Board’s initiating resolution determines the finance mechanism (a general obligation bond) and provides the BAHFA Board with the discretion to set the final bond amount at either \$10 billion or \$20 billion. In addition, the initiating resolution authorizes the BAHFA Board to approve the ballot question, the text of the ballot measure, the tax rate statement and to authorize staff to take action necessary or incidental to carrying out the purpose of the resolution – to call for an election on a general obligation bond.

The Act requires the BAHFA Board to then hold a discussion meeting about the ballot measure at least 30 days in advance of adopting a resolution to call for the election. The BAHFA Board held such a meeting on May 22, 2024. For purposes of placement of a measure on a ballot, BAHFA is considered a district, as defined in California Elections Code Section 317.

[Substantive Legal Requirements for the Ballot Measure](#)

A ballot measure for a general obligation bond for affordable housing submitted by BAHFA must satisfy the requirements as set forth in the Act and Government Code Section 53410. Under current law, assuming the proposed ballot measure is placed on the ballot in all nine Bay Area counties, for the ballot measure to pass, 2/3 of the votes cast by the voters voting in the Nine Bay Area Counties must vote in favor of the ballot measure.

The Legislature has approved Assembly Constitutional Amendment 1 (2023) (“ACA 1”) to be considered by California voters at the November 2024 election. ACA 1 would set the voter threshold for passage of a bond measure at 55 percent of the votes cast instead of 2/3. If ACA 1 passes, then the ballot measure submitted by BAHFA would be subject to a 55 percent approval threshold of votes cast on the measure in the Nine Bay Area Counties, provided the ballot measure meets the requirements of ACA 1. It is anticipated that ACA 10 (2023) will amend ACA 1 to eliminate the provisions governing special taxes, which were not applicable to BAHFA’s ballot measure.

[Guiding Principles for the Text of the Proposed Ballot Measure and Ballot Question](#)

The overall principle in drafting a bond authorization is to ensure that the language of the ballot measure is nonpartisan, accurate, and defensible over the life of the bond expenditures to mitigate against both pre- and post-election legal challenges. A bond authorization is drafted to ensure compliance with Government Code Section 53410 and election law, with a brief introduction. BAFHA’s bond counsel, Orrick Herrington & Sutcliffe, LLP, has advised numerous Bay Area public entities on bond authorizations, including both Alameda County and Santa Clara County, for affordable housing bond obligations, and has well-tested, standard format and language, which has been incorporated.

For BAHFA's ballot measure, there are additional legal requirements that must be satisfied. The Act requires that the ballot measure include: the purpose and goal, categories of eligible expenditures to be funded, estimated number of affordable housing units to be built and preserved by household income category, estimated minimum funding levels by expenditure category for each county, and an overview of decision making and oversight. ACA 1 includes other requirements, such as the creation of an oversight committee.

The ballot question must also satisfy legal requirements, namely that it be nonpartisan, include the rate of payment, and be limited to 75 words.

The language of BAHFA's ballot measure and ballot question must satisfy several goals. For the ballot measure and ballot question, as discussed above, it must meet all the requirements of existing law as well as any additional requirements needed for the bond measure to qualify for a lower vote threshold pursuant to ACA 1 (as it may be amended). Further, the ballot measure is structured to provide BAHFA with the authority and flexibility to address the housing crisis over time and to be a self-sustaining agency, as intended by the Act. Staff have worked closely with the Office of General Counsel to ensure that all these goals are achieved in the current wording of the ballot question and ballot measure.

[Changes to the Ballot Measure from the May 22, 2024 version](#)

Two changes have been made to the ballot measure since the ballot measure was published for the May 22, 2024, meeting. First, Section VII. Interpretation in the ballot measure has been revised to be more specific about the successor to ACA 1. Second, in response to public comment/inquiries, BAHFA's bond counsel has recommended inclusion of paragraphs 3 and 4 of the Tax Rate Statement.

[Next Steps:](#)

If the BAHFA Board adopts the attached resolution, staff will submit the Resolution to the Registrar of Voters and the Board of Supervisors in the Bay Area's nine counties as soon as possible. BAHFA's General Counsel will coordinate with Santa Clara County Counsel's Office regarding the submittal of impartial analysis as required by the Act.

Issues:

None identified.

Recommendations:

Staff recommends that the BAHFA Board adopt the proposed resolution to make certain findings in support of; to approve the BAHFA Board submitting a ballot measure for a general obligation bond for affordable housing in an amount of \$20 billion to the voters of the Nine Bay Area Counties; to consolidate the election at the November 2024 general election; and to authorize staff to take actions related, necessary, or incidental to carrying out the intent of this resolution.

Attachments:

- Attachment A: Executive Board Initiating Resolution
- Attachment B: Proposed BAHFA Board Resolution No. 0034, which includes as attachments the text of the Ballot Measure and the Proposed Tax Rate Statement



Alix A. Bockelman