

CITY OF HAYWARD

RESOLUTION NO. 15-_____

Introduced by Councilmember _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD DECLARING AN OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FROM PROCEEDS OF QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS, AUTHORIZING AN APPLICATION TO THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE TO PERMIT THE ISSUANCE OF QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS, AND APPROVING THE ISSUANCE OF QUALIFIED RESIDENTIAL RENTAL PROJECT BONDS IN ACCORDANCE WITH SECTION 147(f) OF THE INTERNAL REVENUE CODE

WHEREAS, the City of Hayward (the “City”) desires to engage in a program (the “program”) of financing the rehabilitation and construction of a multifamily rental housing;

WHEREAS, Eden Housing Inc., a California not-for-profit corporation the “Sponsor”), has made a request to the City for assistance with respect to the financing of the acquisition and rehabilitation of 86 units of multifamily rental housing located on two sites in Hayward, California, including: (1) 50 units at 625 Berry Avenue and known as Glen Berry Apartments, and (2) 36 units at 561 A Street and known as Glen Eden Apartments (collectively, the "Project"), which will be acquired, owned and operated by the Sponsor or a limited partnership or limited liability company established by the Sponsor or an affiliate thereof (the “Borrower”);

WHEREAS, all or a portion of the units in the Project are expected to be occupied by persons or families of lower or very low income;

WHEREAS, the Sponsor has requested the City to issue its qualified residential rental project (the “Bonds”) in an amount not to exceed \$20,000,000, the proceeds of which would be loaned to the Borrower for the purpose of acquiring and rehabilitating the Project;

WHEREAS, the Borrower expects to pay certain expenditures (the “Reimbursement Expenditure”) in connection with the Project prior to the issuance of the Bonds for the purpose of financing costs associated with the Project on a long-term basis;

WHEREAS, Section 1.103-8(a)(5) and Section 1.150-2 of the Treasury Regulations require the City to declare its reasonable official intent to reimburse prior expenditures for the Project with proceeds of a subsequent borrowing;

WHEREAS, the Internal Revenue Code of 1986 and the applicable regulations thereunder require the Borrower to take this action in connection with the payment of certain expenses in connection with the Project prior to issuance of tax-exempt bonds in order to allow the Borrower to be reimbursed for such expenditures;

WHEREAS, Chapter 11.8 of Division 1 of Title 2 of the Government Code of the State of California governs the allocation in the State of California of the state ceiling established by Section 146 of the Code among governmental units in the State having the authority to issue private activity bonds;

WHEREAS, Section 8869.85 of the Government Code requires a local agency to file an application for a portion of the state ceiling with or upon the direction of the California Debt Limit Allocation Committee ("CDLAC") prior to the issuance of private activity bonds;

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, requires the City Council of the City (the "City Council"), as the elected representative of the City, the host jurisdiction of such facilities, to approve the issuance of the Bonds after a public hearing has been held following reasonable notice;

WHEREAS, a public hearing was held by the City on the date hereof at the City Council's meeting which commenced at the hour of 7:00 p.m. in the City Council Chambers, 777 B Street, Hayward, California 94541, following duly published notice thereof, and all persons desiring to be heard have been heard; and

WHEREAS, it is in the public interest and for the public benefit that the City Council, as the elected representative of the City, the host jurisdiction of such facilities, approve the issuance and delivery by the City, or by a joint powers authority of which the City is a member, of the Bonds;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, as follows:

Section 1. The City finds and determines that the foregoing recitals are true and correct.

Section 2. The City hereby declares its official intent to issue, at one time or from time to time, an aggregate of up to \$20,000,000 principal amount of the Bonds, the proceeds of which are to be loaned to the Borrower to finance a portion of the costs of the acquisition and rehabilitation by the Borrower of the Project, including, for the purpose of reimbursing to the Sponsor and the Borrower costs incurred for the Project prior to the issuance of the Bonds. The City Council hereby further approves the issuance of the Bonds in the amount of up to \$20,000,000 for purposes of Section 147(f) of the Internal Revenue Code of 1986.

Section 3. The Bonds will be payable solely from the revenues to be received by the City or by a trustee or agent of the City from the Borrower pursuant to a loan agreement or other agreement or agreements to be entered into between the City and the Borrower in connection with the financing of the Project.

Section 4. The issuance of the Bonds is subject to the following conditions: (a) the City and the Borrower shall have first agreed to mutually acceptable terms for the Bonds and of the sale and delivery thereof, and mutually acceptable terms and conditions of the Bond indenture, trust agreement, loan agreement, regulatory agreement and/or other related documents for the financing of the Project; (b) all requisite governmental approvals shall have first been obtained; (c) a resolution approving the financing documents to which the City will be a party shall have been adopted by the City Council; and (d) an allocation of tax-exempt bond authority

with respect to the Bonds shall have been received from the California Debt Limit Allocation Committee (“CDLAC”).

Section 5. The officers and agents of the City are hereby authorized to submit an application to CDLAC for an allocation of a portion of the State Ceiling (as that term is used in the California Government Code) in an amount not to exceed \$20,000,000 for application towards the issuance of the Bonds by the City to finance the Project. The officers and agents of, and financial advisors to, the City are hereby authorized, on behalf of the City, to submit to CDLAC all such other documents as may be required pursuant to the California Government Code in furtherance of the application. A cash deposit equal to one-half of one percent of the amount of allocation requested (not to exceed the maximum deposit pursuant to CDLAC guidelines), to be provided by or on behalf of the Borrower, is hereby authorized to be placed into an escrow account, and the officers of the City are hereby authorized to execute a deposit agreement with the Borrower as may be required with respect to such deposit, and to certify to CDLAC that such funds are available.

Section 6. It is intended that this Resolution shall constitute “some other similar official action” towards the issuance of bonds within the meaning of Section 1.103-8(a)(5) of the Treasury Regulations and “official intent” within the meaning of Section 1.150-2 of the Treasury Regulations, each as applicable under Section 103 of the Internal Revenue Code of 1986, as amended.

Section 7. The law firm of Jones Hall, A Professional Law Corporation, is hereby designated as Bond Counsel to the City in connection with the issuance of the Bonds. The financial advisory firm of CSG Advisors Incorporated is hereby designated as Financial Advisor to the City in connection with the issuance of the Bonds. The fees and expenses of such firms for matters related to the Bonds shall be payable solely from the proceeds of the Bonds or other sources of funds of the Borrower.

Section 8. This Resolution shall take effect from and after its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, October 27, 2015.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS

NOES: COUNCIL MEMBERS

ABSTAIN: COUNCIL MEMBERS

ABSENT: COUNCIL MEMBERS

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward