Hayward City Hall
777 B Street
Hayward, CA 94541
www.Hayward-CA.gov

Cover Memo

File #: PH 15-091, **Version:** 1

DATE: October 27, 2015

TO: Mayor and City Council

FROM: Library and Community Services Director

SUBJECT

Public TEFRA Hearing as Required by the Internal Revenue Code of 1986, and Adoption of: a) a Resolution Authorizing the Issuance of Bonds, Declaring the City's Intent to Reimburse Certain Project Expenditures from Proceeds of the Bonds, and Authorizing the Submission of an Application to the California Debt Limit Allocation Committee; b) a Resolution Authorizing the Restructuring of Existing Loans, All in Connection with Financing the Acquisition and Rehabilitation of Glen Berry and Glen Eden Both Housing Developments Owned by affiliates of Eden Housing; c) a Resolution Authorizing the Transfer of Interests in a Regulatory Agreement in Connection with the Glen Berry Development from the Successor Agency to the Housing Authority; d) a Resolution Accepting the Transfer of Interests in a Regulatory Agreement in Connection with the Glen Berry Development from the Successor Agency to the Housing Authority and Authorizing Modification of said Regulatory Agreement; and e) a Resolution Authorizing Modification of a Regulatory Agreement Recorded Against the Glen Eden Development. Exempt from the California Environmental Quality Act pursuant to Section 15301 of the "CEQA" Guidelines

RECOMMENDATION

That the City Council:

a) Conducts a public hearing to consider the issuance of Tax-Exempt Multifamily Housing Revenue Bonds to assist in the acquisition and rehabilitation of Glen Berry and Glen Eden housing developments owned by Eden Housing, Inc., and its affiliates; and

b) Adopts the attached resolution:
   a. approving the use of tax-exempt bond proceeds to reimburse project costs related to the acquisition and rehabilitation of Glen Berry and Glen Eden affordable housing developments owned by affiliates of Eden Housing, Inc. (Eden);
   b. authorizing the filing of an application with the California Debt Limit Allocation Committee (CDLAC) for a portion of the State of California's ceiling of private activity bond allocation; and
   c. approving the issuance of Tax-Exempt Multifamily Housing Revenue Bonds for purposes of Section 147(f) of the Internal Revenue Code of 1986 (Attachment I).

c) Adopts the attached resolution approving the restructuring of certain loans required to promote the rehabilitation of the Glen Berry and Glen Eden developments (Attachment II).

That the Successor Agency:

a) Adopts the attached resolution authorizing the transfer of interests in a regulatory agreement in connection with the Glen Berry development to the Housing Authority (Attachment III).

That the Housing Authority:

a) Adopts the attached resolution accepting the transfer of interests in a regulatory agreement in connection with the Glen Berry development from the Successor Agency (Attachment IV) and authorizing modification of that regulatory agreement.

b) Adopts the attached resolution authorizing modification of a regulatory agreement recorded against the Glen Eden development (Attachment V).

BACKGROUND

Earlier this year, Eden and the City's Housing Division staff began to evaluate financing, including the issuance of Tax-Exempt Multifamily Housing Revenue Bonds (the "Bonds"), for the acquisition and rehabilitation of two Eden-owned properties in Hayward comprising a total of 86 units of multifamily rental housing affordable to low and very low-income households (the "Project"). The use of Bonds enables Eden to enhance the Project's financial feasibility by obtaining Low-Income Housing Tax Credits (Tax Credits). The latter requires that the current owner of the properties (affiliates of Eden) transfer its ownership interest to a new ownership entity. This new ownership entity will have Eden or one of its affiliates as the general partner (or entity responsible for managing the properties) and an affiliate of the Tax Credit investor as the limited partner (or entity that will receive the tax benefits). For this reason, the Project involves an acquisition.

Table A shows the names of the two properties, their addresses, and the number of affordable units in each of them:

Table A: The Properties Comprising the Project

Property Name	Location	Number of Units
Glen Berry Apartments	625 Berry Avenue	50
Glen Eden Apartments	561 A Street	36
	Total:	86

The City provided critical financial support in the form of loans to Eden to fund the properties at different stages of development. The former Redevelopment Agency (the "Former RDA" through the Low-Moderate Income Housing Fund) also provided loans to both properties. The latter were provided in the form of bridge loans and, for this reason, they were repaid at the time of the permanent financing closing. In spite of this, the regulatory agreements that were recorded against the properties at the time the Former RDA loans were initially provided remained in place - as required by California Redevelopment Law.

Due to an oversight, the regulatory agreement in connection with one of the Former RDA bridge loans (specifically, a loan to Glen Berry) was not included in the Final Housing Asset List approved by the State Department of Finance in 2012. As a consequence, for the Project to happen, the Housing Authority (the

Authority) will have to accept the transfer of the interests in that regulatory agreement from the Successor Agency whose Oversight Board *directed* such transfer via a resolution adopted on September 22, 2015. The acceptance of the transfer by the Authority would be approved through the resolution included as Attachment IV.

In order to promote the acquisition and rehabilitation of the Project, Eden has requested that the outstanding City loans are restructured as further described below. Eden has also requested that the City serve as the conduit issuer of the Bonds for the Project.

DISCUSSION

The Original Loans and Overall Balance to Date. The following table summarizes the different loans that the City provided to Eden to help finance the development of the properties:

Table B: The Original Loans

Property	Source	Date of Note or Loan Agreement	"Original Loans"	Loan Rate	Balance to Closing*
GLEN BERRY	HOME	6/8/1993	$ 500,000.00	3.00%, Simple	$ 706,532.00
	CDBG	12/1/1992	$ 298,903.00	3.00%, Simple	$ 504,502.00
		SUBTOTAL	**$ 798,903.00**	SUBTOTAL	**$ 1,211,034.00**
GLEN EDEN	CDBG	7/27/1992	$ 408,145.00	3.00% Simple	$ 695,785.00
		SUBTOTAL	**$ 408,145.00**	SUBTOTAL	**$ 695,785.00**
		TOTAL	***$ 1,207,048.00***	***TOTAL***	***$ 1,906,819.00***

*These balances (of principal and accrued interest to February 1, 2016) will constitute the principal of the new Restructured loans whose rates will be recast as further explained below.

As illustrated by Table B, above, the City's original investment in the form of loans to the properties totaled over **$1.2 million**. A calculation of the interest on the Original Loans to February 1, 2016, the date the Project financing is expected to close ("Closing"), yields a total balance (principal and interest) of approximately **$1.9 million**.

Restructuring the Original Loans. As mentioned in the Background section of this report, Eden has requested that the City restructure the Original Loans to promote the acquisition and rehabilitation of the properties and to comply with tax law. More specifically, to comply with tax law Eden has requested that the interest rates of the Original Loans are recast at a financially-feasible rate, which is anticipated to be the prevailing Applicable Federal Rate (AFR) at the time of the rate lock. As of the date of this report, the rate assumed in the Project's financial projections is 2.8% compounding, which translated into a simple rate is actually higher than the current 3% simple interest rate. Although it represents an additional (but minor) financing cost to the Project, restructuring the Original Loans this way will allow Eden to utilize both Bonds and Tax Credits which, when used together, provide the most favorable financing for affordable housing development.

This Project does not require any write off of the principal or accrued interest on the Original Loans as was necessary for the most recent similar refinance/resyndication project discussed by Council (the acquisition and rehabilitation of four different affordable properties owned by Eden) on July 21, 2015.

Fifty-Five Year Affordability Restrictions for the Entire Project. In exchange for the City's agreement to restructure the Original Loans, the City and the Housing Authority will amend and restate the existing regulatory agreements relating to the CDBG loans and former RDA bridge loans in order to: a) expand their affordability requirements so as to restrict 100% of the units in the case of Glen Berry (Glen Eden already restricts 100% of the units), and b) extend their regulatory terms for fifty-five years from completion of the rehabilitation.

Other than the above-mentioned changes to the Housing Authority regulatory agreements, the affordability restrictions (i.e., the affordability levels, the duration of the restrictions, etc.) in the existing regulatory agreements will generally remain the same. This approach will help maintain clarity for the Department of Housing and Urban Development (HUD) during the remaining HOME and CDBG funding reporting and monitoring periods, if applicable. Attachment VI is a summary of the existing and proposed affordability restrictions, including the unit mix of the two properties. The CDBG program (one of the sources of funding) only requires that the funding provided meets a national objective upon initial occupancy and that the loans or grants are repaid if the intended use of the properties, in this case affordable rental housing, changes during the affordability period. For these reasons, CDBG is not part of Attachment VI.

Documentation of the Restructured Loans and Security. The Restructured Loans will be documented by amended and restated documents or other modifications to the existing loan documents. However, because the Restructured Loans will be repaid from revenues generated by the entire Project as they are part of a "Common Scheme of Financing," a term in used in tax credit financing, the Restructured Loans will be cross-collateralized. In other words, the Restructured Loans will be secured by one single lien, a deed of trust recorded against the entire Project (the two properties). The City's Legal Counsel on affordable housing has advised staff that this is a widely-used financing structure and that both the modification of the Original Loans and the cross-collateralization of the Restructured Loans comply with the HOME and CDBG program regulations.

Scope of Rehabilitation Work. Both Glen Berry and Glen Eden are over twenty years old and are in need of major upgrades and repairs. The restructuring of the Original Loans and the new tax credit and bond financing will support a Project recapitalization and much needed rehabilitation, with additional energy-efficiency improvements, to the extent permitted by the budget. The Tax Credits are anticipated to bring in approximately $9.5 million in investor equity in support of the work to be performed. The scope of rehabilitation will include:

- weatherproofing of roofs, windows, and building envelopes;
- upgrading the Project buildings to bring them up to building code changes and Tax Credits and bond issuance standards that have been enacted since the properties were originally placed-in-service;
- safety upgrades including seismic performance;
- universal accessibility upgrades;
- refreshing of common areas and unit interiors; and
- upgrading all systems to a minimum lifespan of ten or more years.

Depending on the budget and required approvals, Eden will also:

- perform energy and water conservation improvements on the properties by installing photovoltaic and solar thermal systems;
- perform a larger-scale enhancement of common areas and unit interiors; and
- add new site and resident amenities.

Relocation. There will not be any permanent relocation or displacement of residents due to the rehabilitation work. However, even though Eden will make every effort to minimize the need for temporary relocation, the current Project budget includes approximately $170,000 in case it is necessary to pay for temporary relocation costs associated with the Project. This would include the costs to retain an experienced third-party consultant to ensure compliance with all applicable federal, State and local laws governing relocation and to minimize the disruption to the affected residents' daily lives and schedules, if any.

The Project Financing, the Inducement and the TEFRA Hearing. In addition to the Restructured Loans (see Table B), the City-approved financing for the Project includes up to $20 million in Bonds which will be issued by the City to accommodate Eden's request. The Bonds will be complemented by approximately $9.5 million of non-competitive 4% Tax Credits. Together, the Bonds and the Tax Credits constitute the largest source of external financing for the Project. These two programs are normally used together for the financing of affordable rental housing as they provide the most favorable financing for projects.

The Bonds would be payable only from the revenues from the Project, and the City would not have any obligation to advance any of its funds or its credit for the repayment of the Bonds. In other words, the City simply acts as a conduit for the Bond issuance process and is not financially responsible for repayment. It is currently anticipated that the Bonds would be sold on a private placement basis to a sophisticated institutional buyer.

In order to issue the bonds, the City and Eden need to apply to the California Debt Limit Allocation Committee (CDLAC) for an allocation of the State's ceiling of private activity bonds. CDLAC's rules require that the issuing jurisdiction adopt a resolution approving the submittal of the application prior to filing it with CDLAC. The City and Eden intend to file the application for the Project within the next few weeks so that the application can be considered at CDLAC's December 16 meeting.

In addition to approving the submittal of the CDLAC application, the Internal Revenue Code of 1986 (the Code) requires that the "applicable elected representatives" of the jurisdiction where a project to be financed with "private activity bonds" is to be situated, adopt a resolution approving the issuance of such bonds after holding a Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) public hearing, which must be noticed in a newspaper of general circulation. The City Council is being asked to hold such public hearing which, as required by the Code, was noticed on October 13.

Staff proposes using the same bond counsel (Jones Hall) as has been used for previous transactions involving the issuance of tax-exempt bonds for affordable housing developments. Jones Hall attorneys, like all the team of consultants proposed for this transaction, are very familiar with the City's processes and, as such, are able to provide the requested services more efficiently.

The actions at this meeting are only preliminary. The Bonds cannot be issued until the Bond allocation has been received from CDLAC, bond counsel has prepared all documents, the purchaser or underwriter of the Bonds has provided all necessary agreements, and the bond documents and final resolution are approved by Council. The actions today permit the submission process to CDLAC to begin but do not bind the City to ultimately issue any bonds.

The City has facilitated similar transactions in the past and Council is familiar with the actions required by the Code to initiate the process to issue tax-exempt bonds for affordable housing or other projects of public benefit. Recently, Council held three TEFRA hearings: one for the issuance of bonds for the acquisition and rehabilitation of four different affordable properties owned by Eden; one to help finance the construction of the South Hayward BART Affordable Project, currently under construction; and one for the Hayward Senior Housing II development located at B and Grand Streets, completed earlier this year.

CEQA and NEPA. The Restructured Loans and proposed rehabilitation are categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15301 of the CEQA Guidelines because the rehabilitation work will be performed to existing facilities. In addition, NEPA (the National Environmental Protection Act) is not triggered because no new federal financing will be provided.

ECONOMIC IMPACT

The proposed rehabilitation work will not only improve the long-term viability of the properties but will also ensure the long-term affordability of the units to Hayward families as a result of new fifty-five year covenants that will be recorded against the properties. The following are additional benefits of the Project rehabilitation:

- Improved Project sustainability: as mentioned in the previous section, the goal of the rehabilitation work is not only to extend the buildings and their major systems' useful life but also to perform, to the extent permitted by the budget, energy-efficiency improvements.

- Improved property management and mandated resident services: through close and frequent monitoring visits and audits, the Tax Credit Allocation Committee (TCAC), the State agency that administers the tax credits program, will ensure that the properties are well managed and that services and amenities adequate for the resident population are provided throughout their compliance period - the first fifteen (15) years after completion of the rehabilitation.

- Regional Housing Needs Allocation (RHNA): although no new affordable units will be created within the City limits, the City will receive partial credits towards State-mandated RHNA targets as the work on the properties will qualify as substantial rehabilitation, which is one of the means for unit-production credits under the RHNA/Annual Housing Element Progress Report guidelines. The Project will be reported on the corresponding RHNA Report as a project that helps the City further one of its Housing Element goals: to conserve and improve the condition of the existing housing stock.

- Potential funding or grants for much-needed local projects of community benefit: As mentioned above, the proposed work for the properties will meet the threshold to be categorized as substantial rehabilitation. This could present funding opportunities for the City through State programs that reward the creation or substantial rehabilitation of affordable housing such as the

State Department of Housing and Community Development Department's Housing-Related Parks program. The City was recently awarded approximately $1.1 million through this program. Some of the credits the State counted towards the calculation of the award were from substantial rehabilitations of affordable housing projects in Hayward since 2010.

- Local employment: it is expected that the General Contractor will hire local workers to assist in the rehabilitation construction work.

In sum, addressing the Project's rehabilitation needs will improve the properties' operating performance and ensure their long-term affordability and viability. Therefore, this Project advances Council priorities and the City's Housing Element goals.

FISCAL IMPACT

The restructuring of the Original Loans does not represent a financial impact to the General Fund or other special fund. There is no new investment of funding of the City or Housing Authority on the Project. The Original Loans will only be brought up to current affordable housing underwriting standards to promote the acquisition and rehabilitation of the properties and to comply with tax law.

The issuance of the Bonds does not represent a financial impact to the General Fund either and the General Fund is not responsible for repayment of the Bonds. An undetermined amount of revenue will be received by the City upon completion of the Project through bond issuance and administrative fees. These will help to offset some of the City staff costs associated with implementation and monitoring of the Project. All costs associated with issuance of the Bonds will be reimbursed through bond proceeds, including the City's financial advisors and legal counsel on affordable housing and bond counsel fees.

PUBLIC CONTACT

As required by the Code, the notice of the TEFRA hearing was published in the Daily Review on October 13, 2015. No other public notice is legally required because: a) the City is not committing additional funding to the Project, b) the Original Loans are only being restructured, and c) the Restructured Loans and the proposed rehabilitation do not trigger NEPA or CEQA review.

NEXT STEPS

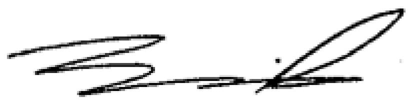
If the City Council adopts the attached resolutions authorizing the restructuring of the Original Loans, staff and its consultants will prepare the necessary legal documents to memorialize and secure the Restructured Loans. The final documents will not be brought back to Council because the resolutions authorize the City Manager to negotiate and execute the documents within the parameters developed in more detail in the attached Term Sheet (Attachment VII).

If the City Council adopts the attached resolution authorizing the bond issuance, staff and consultants will prepare documentation necessary for the bond issuance to take place. Staff will bring an item back to Council for approval of final bond documents.

Prepared by: Omar Cortez, Housing Development Specialist

Recommended by: Sean Reinhart, Library and Community Services Director

Approved by:



Fran David, City Manager

Attachments:

Attachment I	Resolution Authorizing the Issuance of Bonds and Related Actions
Attachment II	City Council Resolution Approving the Restructuring of the Original Loans
Attachment III	Successor Agency Resolution Authorizing Transfer of Interests in Regulatory Agreement - Glen Berry
Attachment IV	Housing Authority Resolution Accepting Transfer of Interests in Regulatory Agreement - Glen Berry
Attachment V	Housing Authority Resolution Authorizing Modification of Regulatory Agreement - Glen Eden
Attachment VI	Summary of Proposed Affordability Restrictions
Attachment VII	Term Sheet
Attachment VIII	Acronyms Used in This Report