



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 04/05/05

AGENDA ITEM 6

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: TEFRA: Authorization to Issue Bonds for the Purchase and Rehabilitation of the Lord Tennyson Apartments

RECOMMENDATION:

It is recommended that the City Council:

- Adopt the attached resolution authorizing the issuance of \$13,918,000 in tax-exempt multifamily housing revenue bonds and \$710,000 in taxable multifamily housing revenue bonds to assist in the purchase and rehabilitation of the Lord Tennyson Apartments;
- Authorize the City Manager to execute all other implementing documents in connection with the proposed issuance.

DISCUSSION:

On January 13, 2004, Council conducted a TEFRA hearing and conditionally approved a resolution authorizing the issuance of up to \$14 million in multifamily mortgage revenue bonds for the acquisition and rehabilitation of the Lord Tennyson Apartments. Council also authorized the City to apply to the California Debt Limit Allocation Committee (CDLAC) for an allocation of multifamily mortgage revenue bonds. In February, at the request of Volunteers of America (VOA), the City applied for an allocation of \$10.6 million in mortgage bond authority. In April, the City was awarded the requested allocation.

Since that time, several things happened. VOA has continued to assess the property and identified additional rehabilitation needs that would substantially improve the property for the families living there. As a result, VOA requested that the City apply to CDLAC for an additional bond allocation of approximately \$3.2 million. Rehabilitation of the property will cost approximately \$48,000 per unit.

Because the bond allocation had been awarded in April, the bonds needed to be issued by the required date of July 30. Therefore, on July 6, 2004, Council adopted a resolution authorizing the issuance of \$10.6 million of multifamily mortgage bonds for this project. The bonds were put into a guaranteed investment contract until the remaining allocation could be obtained from CDLAC and issued for the project.

CDLAC has awarded the requested allocation of approximately \$3.2 million and VOA is requesting that the City issue these bonds and an additional \$710,000 in taxable bonds for the acquisition and rehabilitation of the property. This will bring the total amount of bonds issued to \$14,625,000; of which \$13,915,000 are tax-exempt and \$710,000 taxable. Of these monies, approximately \$2.5 million will be used for acquisition and \$12.1 million used for property rehabilitation.

Federal law requires that a TEFRA hearing be conducted if 12 months have passed since the previous TEFRA hearing without all the bonds being issued for the project. Because it has been over a year since the TEFRA hearing was conducted for this project, the purpose of this public hearing is to meet both the TEFRA requirements to notice the community about the project and to issue the remaining bonds.

In the seven months since the last public hearing several things have happened. First, VOA has chosen to use Freddie Mac mortgage insurance as the credit enhancement instead of HUD's FHA mortgage insurance. Freddie is an AA rated entity with a reasonably quick, efficient and predictable processing time. The primary difference for the project is that the loan term will be 30 years, instead of the 40 year term it would have been with FHA.

Second, and most important, HUD withdrew its offer of Section 8 Vouchers for tenant households not currently covered by Section 8, the vast majority of tenants at the Lord Tennyson. As Council is aware, Section 8 Vouchers allow low income households to pay 30% of their total household income for rent and HUD pays the difference between that amount and the HUD-established Fair Market Rent, thereby making housing more affordable. Although HUD had committed to provide enhanced vouchers for all tenants whose incomes were below 80% of area median income (AMI), in September, HUD informed VOA that its staff had made a mistake and that HUD was not going to provide the vouchers. Due to the way in which the preservation law was written, only projects of for-profit entities were eligible for vouchers.

This created a huge problem since the financial viability of the project was based on one-third of the unit rents being equal to 30% of the monthly household income of tenants at 50% area median income (AMI) and two-thirds of the rents being equal to 30% of 60% AMI. These rents were adjusted for household unit size and range from approximately \$925 to \$1440 per month.

Out of 252 units, there are 143 households at the Lord Tennyson Apartments who have incomes at or below 60% AMI, adjusted for household size. The question was how to protect these current tenants, particularly those whose incomes are below 50% AMI, from large rent increases because no subsidy would be forthcoming from the federal government.

VOA worked with CDLAC to develop the rent structure described below. In sum, VOA will provide current tenants (whose incomes are at or below 60% AMI) rent subsidies totaling \$885,000 over six years. In addition, to help tenant households prepare for the increase in rent, VOA decided that current rents will be frozen until July 1, 2006 for all households whose incomes are at or below 60% of AMI and do not have Section 8 Vouchers.

For the 143 current tenant households whose incomes are at or below 60% of AMI, there will be *no* increase in rents until July 1, 2006. After that—

1. Forty-six current tenant households with incomes at or below 30% AMI (\$22,350 - \$26,850 adjusted for household size) will be charged rents that increase only 2-3% each year (approximately \$20-\$28 per month).
2. Sixty-seven current tenant households whose incomes are between 31% and 50% AMI (\$37,000 - \$44,400 adjusted for household size), will be charged rents that increase between \$64 - \$75 each month for six years until the rents equal 30% of 50% AMI, adjusted for unit size. After that rents will increase only 2-3% each year to keep up with inflation.
3. Thirty current tenant households whose incomes are between 51% and 60% AMI (\$44,000 - \$53,300), will have their rents increase up to 30% of 60% AMI over a two year period (approximately \$152 to \$175 per month). Thereafter, rents will increase only 2-3% each year to keep up with inflation.

After the first year, the annual rent increase for inflation will be approximately 2 - 3% per year. The project's long term use restrictions are that approximately one-third of the units will have rents affordable to households at 50% AMI and two-thirds will have rents affordable to households at 60% AMI. As current tenants receiving subsidy, vacate their units over time, new tenants will be charged these rents. Approximately 30 units are currently vacant and will remain so until after the rehabilitation has been completed so that current tenants can move within the project when their units are under construction.

There are 79 tenant households whose incomes are above 60% of AMI. Rents will immediately increase to 30% of 60% AMI for these households, since they have been paying rents that are approximately 40% below market since becoming tenants. The change in rent will be as follows:

Unit Type	July 1, 2004	July 1, 2005
2BR/1BA	\$664	\$1,118
3BR/2BA	\$779	\$1,292
4BR/2BA	\$898	\$1,440

Even with this increase, tenants will pay less than 30% of their monthly household income for rent. VOA recognized that increases of \$454 - \$542 per month are a dramatic change and could pose significant problems for current tenants. Therefore, VOA developed several forms of assistance for these tenants. If they sign Memoranda of Understanding (MOU) with VOA by May 15, 2004, tenants who desire to move and want assistance purchasing a home will receive between \$12,000 and \$18,000 in a lump sum payment, depending upon the size of their units; tenants who desire to move, but don't want to purchase a home, will receive between \$8,000 and \$12,000.

Four meetings have been conducted with current tenants; two meetings for over-income households and two for those whose incomes are at or below 60% AMI. These meetings were held at the Lord Tennyson on February 16 and 17, 2004 to discuss the property rehabilitation and rent programs. Patrick Sheridan, Vice President, Real Estate Operations, VOA, and a specialist

in relocation, David Richman, from Overland, Pacific and Cutler conducted the meetings. At the meeting for over-income tenants, Mr. Sheridan assured the tenants that they did not have to move. However, VOA recognized that their rent increase would be substantial and that many of the tenants might be able to become homeowners if they received some moving and homeownership assistance. VOA discussed the purchase assistance plan and hired a full-time relocation expert to provide assistance to residents who would like to move to another apartment or to become homeowners. A personalized letter was sent to each resident after the meeting, describing the rent and incentive plan available to the household.

Of the original 79 tenant households, approximately 50 households have taken advantage of the lump sum payment. Fourteen tenant households have either purchased a home or are in escrow; 18 households are pre-approved for home purchase; and 18 have moved or have stated their intention of moving to a new apartment. Twenty-nine households have not yet signed a MOU, however, twenty-five have indicated that they are interested in homeownership; two indicated that they will stay at the Lord Tennyson. Three tenant households have not responded.

Most current tenant households who remain at the Lord Tennyson after rehabilitation has been completed will pay less for rent under the VOA subsidy scenario than if they had received Section 8 Vouchers. When a tenant receives a Section 8 Voucher, s/he immediately pays 30% of household income for rent and the Housing Authority pays the rest. With the VOA subsidy, the rent of most current tenants will rise in relatively small increments over a six year period. However, like any other tax credit project without federal assistance, households will eventually have to pay the full rental rate.

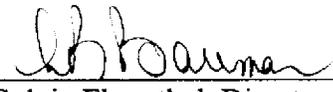
Staff believes that this plan is the best that can be accomplished, given HUD's withdrawal of their offer of Section 8 Vouchers. When the rehabilitation is complete, tenants will have updated apartments and community facilities at rents that will be below market for 55 years.

Prepared by:



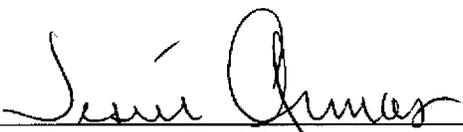
Ann R. Bauman
Issuer's Representative

Recommended by:

for 

Sylvia Ehrenthal, Director of Community
and Economic Development

Approved by:



Jesús Armas, City Manager

Resolution

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION OF THE CITY OF HAYWARD AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF CITY OF HAYWARD MULTIFAMILY HOUSING REVENUE BONDS (LORD TENNYSON APARTMENTS) 2005 SERIES A AND 2005 SERIES A-T, AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE, A FINANCING AGREEMENT, A REGULATORY AGREEMENT, AN INTERCREDITOR AGREEMENT, AN OFFICIAL STATEMENT, AND A PURCHASE CONTRACT, AND AUTHORIZING THE EXECUTION AND DELIVERY OF AND APPROVING OTHER RELATED DOCUMENTS AND APPROVING OTHER RELATED ACTIONS IN CONNECTION THEREWITH

WML
3/31/05

WHEREAS, Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California (the "Act"), authorizes cities to incur indebtedness for the purpose of financing and refinancing the acquisition, rehabilitation and development of multifamily rental housing facilities to be occupied in part by persons of low and very low income;

WHEREAS, the City of Hayward (the "City") hereby finds and declares that it is necessary, essential and a public purpose for the City to engage in a program (the "Program") of financing and refinancing the acquisition, rehabilitation and development of multifamily rental housing facilities, and has determined to borrow money for such purpose by the issuance of revenue bonds as authorized by the Act;

WHEREAS, the City hereby finds and declares that this resolution is being adopted pursuant to the powers granted by the Act;

WHEREAS, Lord Tennyson VOA Affordable Housing, L.P., a California limited partnership (the "Borrower"), has requested that the City issue and sell the Bonds (hereinafter defined) for the purpose of financing and refinancing the acquisition, rehabilitation and development of a multifamily rental housing project commonly known as Lord Tennyson Apartments, located at 2191 West Tennyson Road, Hayward, California, (the "Project"); and

WHEREAS, all conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Bonds and the implementation of the Program as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required

by the laws of the State of California, including the Act.

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

Section 1. The City hereby finds and declares that the above recitals are true and correct.

Section 2. Pursuant to the Act and the Indenture (hereinafter defined), revenue bonds of the City, designated as "City of Hayward Variable Rate Demand Multifamily Housing Revenue Bonds (Lord Tennyson Apartments) 2005 Series A" in an aggregate principal amount not to exceed \$13,915,000 and as "City of Hayward Variable Rate Demand Taxable Multifamily Housing Revenue Bonds (Lord Tennyson Apartments) 2005 Series A-T" in an aggregate principal amount not to exceed \$710,000 (collectively, the "Bonds"), are hereby authorized to be issued. The Bonds shall be executed by the manual or facsimile signature of the City Manager of the City, and attested by the manual or facsimile signature of the City Clerk of the City, in the form set forth in and otherwise in accordance with the Indenture.

Section 3. The trust indenture with respect to the Bonds (the "Indenture") between the City and U.S. Bank National Association, as trustee (the "Trustee"), in the form on file with the office of the City Clerk, is hereby approved. The City Manager of the City, or a written designee of the City Manager (the "Designated Officers") are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Indenture, and the City Clerk is hereby authorized and directed, for and in the name and on behalf of the City, to attest the Designated Officer's signature on the Indenture, in substantially said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City, including such additions or changes as are necessary or advisable in accordance with Section 10 hereof (provided that no additions or changes shall authorize an aggregate principal amount of Bonds in excess of \$14,625,000), the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Indenture. The date, maturity dates, interest rate or rates, interest payment dates, denominations, form registration privileges, manner of execution, place of payment, terms of redemption, the right of the owners of the Bonds to tender their Bonds for repurchase, and other terms of the Bonds shall be as provided in the Indenture as finally executed.

Section 4. The financing agreement relating to the Bonds (the "Financing Agreement") among the Trustee, the City and the Borrower, in the form on file with the office of the City Clerk, is hereby approved. The Designated Officers of the City are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Financing Agreement in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City including such additions or changes as are necessary or advisable in accordance with Section 10 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Financing Agreement.

Section 5. The amended and restated regulatory agreement and declaration of restrictive covenants relating to the Bonds (the "Regulatory Agreement") among the City, the Trustee and the Borrower, in the form on file with the office of the City Clerk, is hereby approved. The Designated Officers of the City are, and each of them acting alone is, hereby authorized and directed for and in the name of and on behalf of the City, to execute and deliver the Regulatory Agreement in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City including such additions or changes as are necessary or advisable in accordance with Section 10 hereof, the approval of such changes to be conclusively evidenced by the execution and delivery by the City of such Regulatory Agreement.

Section 6. The intercreditor agreement relating to the Bonds (the "Intercreditor Agreement") among the Trustee, the City and the Federal Home Loan Mortgage Corporation, in the form on file with the office of the City Clerk, is hereby approved. The Designated Officers of the City are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Intercreditor Agreement in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City including such additions or changes as are necessary or advisable in accordance with Section 10 hereof, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Intercreditor Agreement.

Section 7. The bond purchase agreement (the "Purchase Contract") relating to the Bonds among the City, the Borrower and Merchant Capital, L.L.C. (the "Underwriter"), in the form on file with the office of the City Clerk, is hereby approved. The Designated Officers of the City are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to accept the offer of the Underwriter to purchase the Bonds contained in the Purchase Contract (when such offer is made and if such offer is consistent with Section 3 hereof) and to execute and deliver said Purchase Contract in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Purchase Contract.

Section 8. The preliminary official statement relating to the Bonds (the "Preliminary Official Statement") in the form on file with the office of the City Clerk, is hereby approved. The Designated Officers are, and each of them acting alone is, hereby authorized and directed, for and in the name and on behalf of the City, to bring to final form the Preliminary Official Statement (the "Official Statement") upon the sale of the Bonds and to execute the Official Statement in said form, with such additions thereto or changes therein as are recommended or approved by such officers upon consultation with bond counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Official Statement. The Underwriter is hereby authorized to distribute copies of the Preliminary Official Statement to persons who may be interested in the purchase of the Bonds and is directed to deliver copies of the Official Statement to all actual purchasers of the Bonds.

Section 9. The Bonds, when executed, shall be delivered to the Trustee for

authentication. The Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee's certificate of authentication and registration appearing thereon, and to deliver the Bonds, when duly executed and authenticated, to the purchasers thereof in accordance with written instructions executed on behalf of the City by one of the Designated Officers, which instructions such officers are, and each of them is, hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver to the Trustee. Such instructions shall provide for the delivery of the Bonds to the purchasers thereof in accordance with the Purchase Contract, upon payment of the purchase price therefor.

Section 10. All actions heretofore taken by the officers and agents of the City with respect to the establishment of the Program and the sale and issuance of the Bonds are hereby approved, confirmed and ratified, and the proper officers of the City, including the Designated Officers, are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents which they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Bonds in accordance with this Resolution and resolutions heretofore adopted by the City and in order to carry out the Program, including but not limited to those certificates, agreements, deeds of trust and other documents described in the Indenture, the Financing Agreement, the Regulatory Agreement, the Intercreditor Agreement, the Purchase Contract and the other documents herein approved and any certificates, agreements or documents as may be necessary to further the purpose hereof, evidence credit support or additional security for the Bonds, or evidence the obligation to purchase Bonds upon tender by the Bondholders (including a tender agent agreement or an intercreditor agreement), but which shall not create any obligation or liability of the City other than with respect to the revenues and assets derived from the proceeds of the Bonds.

Section 11. This resolution shall take effect immediately upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, _____, 2005.

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