



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Rosalynn Hughey  
Rick Bruneau

**SUBJECT:** SEE BELOW

**DATE:** January 30, 2024

Approved

Date

1/31/24

**COUNCIL DISTRICT: 6**

**SUBJECT: APPROVAL OF AN EXCEPTION TO THE CITY MULTIFAMILY HOUSING REVENUE BOND POLICY ALLOWING VIEW AT JULIAN AFFORDABLE HOUSING DEVELOPMENT TO USE AN ALTERNATE BOND ISSUER AND HOLD THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT HEARING FOR CALIFORNIA MUNICIPAL FINANCE AUTHORITY'S ISSUANCE OF TAX-EXEMPT MULTIFAMILY REVENUE BONDS TO FINANCE VIEW AT JULIAN AFFORDABLE HOUSING DEVELOPMENT**

## **RECOMMENDATION**

- a. Adopt a resolution authorizing an exception to the City Council's Multifamily Housing Revenue Bond Policy, Council Policy 1-16, for the issuance of Multifamily Housing Revenue Bonds for View at Julian due to special circumstances, thereby allowing the California Municipal Finance Authority to issue the bonds.
- b. Hold a Tax Equity and Fiscal Responsibility Act of 1982 public hearing for the issuance of \$90,000,000, not to exceed \$125,000,000, of tax-exempt multifamily housing revenue bonds by the California Municipal Finance Authority, to finance the construction of a 300-unit multifamily rental housing development to be located at 950-970 West Julian Street in San José by JEMCOR Development Partners, LLC; and to pay certain expenses incurred in connection with the issuance of the bonds.

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- c. Adopt a resolution approving the issuance of tax-exempt multifamily housing revenue bonds by the California Municipal Finance Authority in an aggregate principal amount of \$90,000,000, not to exceed \$125,000,000, to finance the construction of a new 300-unit multifamily affordable rental housing development to be located at 950-970 West Julian Street in San José, and to pay certain expenses incurred in connection with the issuance of the bonds.

### **SUMMARY AND OUTCOME**

Approval of this recommendation will enable the development of View at Julian, a multifamily rental housing development located at 950-970 West Julian Street, to move forward with the California Municipal Finance Authority (CMFA) as its alternate bond issuer. This action will result in the construction of a 300-unit multifamily affordable housing development consisting of 296 new deed-restricted affordable apartments and four manager apartments.

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) hearing provides an opportunity for the public to review and provide comments on the issuance of \$90,000,000 of tax-exempt revenue bonds, for a not to exceed amount of \$125,000,000, for View at Julian rental housing development. The bond amount to be issued by CMFA for the multifamily rental housing development will be \$90,000,000. The aggregate amount of \$125,000,000 is the maximum bond allocation that CMFA may issue. The aggregate amount provides flexibility to the developer, whereby the developer could apply for a California Debt Limit Allocation Committee supplemental allocation after the TEFRA hearing is conducted, and an additional TEFRA hearing would not need to be conducted.

Additionally, approval of the recommended action will authorize CMFA to issue tax-exempt bonds to finance the construction of View at Julian rental housing development, allowing the development to move forward with no City funding.

### **BACKGROUND**

San José lacks a sufficient amount of affordable housing to meet residents' needs. The City's Regional Housing Needs Allocation for the 2023-2031 (sixth cycle) Housing Element is 62,200 housing units. Fifty-five percent of these units must be affordable (i.e., for extremely low-, very low-, low-, and moderate-income households). The City's Housing Catalyst Work Plan incorporates programs and strategies to produce and preserve affordable housing in alignment with the 2023-2031 Housing Element.

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The City adopted a Multifamily Housing Revenue Bond Policy in 2002, City Council Policy 1-16<sup>1</sup> (Bond Policy), to provide guidance when the City acts as the issuer of multifamily housing revenue bonds. The Bond Policy requires the City serve as the bond issuer for financing affordable housing developments within the City unless the City Council approves an exception. The Bond Policy allows an alternate bond issuer under the following circumstances:

- If the City is not making a grant or loan to the project and the project is one of multiple projects being financed by the project sponsor;
- The alternate issuer will assume full responsibility for issuance and ongoing compliance of the bond issuance with federal tax and state laws; and
- If there are special circumstances merited by the needs of the development and the financing.

***The Affordable Housing Development***

**View at Julian**

The affordable housing development, View at Julian, is located at 950-970 West Julian Street (**Attachment** – Site Map.) The project proposal consists of 300 apartments, with all but four of the apartments (which are reserved as manager units) targeting families with incomes between 30-70% of area median income (AMI). JEMCOR Development Partners, LLC (Developer) proposes to demolish two commercial buildings totaling approximately 19,820 square feet and construct an eight-story housing development on the approximately 1.10-gross acre site. The existing commercial buildings are currently occupied by owner-users who will vacate prior to the start of construction. The development will be subject to the California Tax Credit Allocation Committee regulations and shall comply with the requirements of the California Relocation Assistance Law.

CMFA applied for an allocation of the 2023 State Ceiling on Qualified Private Activity Bonds from the California Debt Limit Allocation Committee and received an allocation of \$75,000,000 on August 23, 2023 for the View at Julian development. In addition to California Debt Limit Allocation Committee's allocation, CMFA plans to issue \$15,000,000 in recycled bonds for a total of \$90,000,000 in tax-exempt bond issuance. CMFA may issue bonds for a not to exceed amount of \$125,000,000 if a supplemental allocation from the California Debt Limit Allocation Committee is requested at a future date. The Developer expects construction to start in March 2024 and be completed by May 2026. Based on California Tax Credit Allocation Committee occupancy guidelines, the monthly rent limits proposed are detailed in **Table 1**. The timeline for bond financing is listed in **Table 2**.

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<sup>1</sup> Bond Policy: <https://www.sanjoseca.gov/home/showpublisheddocument/12097/636918784470730000>

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**Table 1: View at Julian's Affordability Unit Mix and AMI Levels**

| APART<br>MENT<br>SIZE | UP TO 30% AMI |                     |                | UP TO 50% AMI |                     |                | UP TO 60% AMI |                     |                | UP TO 70% AMI |                     |                | MGR<br>APT | TOTAL |
|-----------------------|---------------|---------------------|----------------|---------------|---------------------|----------------|---------------|---------------------|----------------|---------------|---------------------|----------------|------------|-------|
|                       | Apts          | Max<br>Income<br>** | Rent<br>Limits | Apts          | Max<br>Income<br>** | Rent<br>Limits | Apts          | Max<br>Income<br>** | Rent<br>Limits | Apts          | Max<br>Income<br>** | Rent<br>Limits |            |       |
| 1-BD                  | 20            | \$40,155            | \$1,003        | 20            | \$66,925            | \$1,673        | 82            | \$80,310            | \$2,007        | 82            | \$93,695            | \$2,342        |            | 204   |
| 2-BD                  | 10            | \$48,180            | \$1,204        | 10            | \$80,300            | \$2,007        | 36            | \$96,360            | \$2,409        | 36            | \$112,420           | \$2,810        | 4          | 96    |
| Total                 | 30            |                     |                | 30            |                     |                | 118           |                     |                | 118           |                     |                | 4          | 300   |

**Table 2: View at Julian's Bond Financing Timeline**

| Task  | Date              |
|---|-------------------|
| California Debt Limit Allocation Committee Application Deadline | May 23, 2023      |
| California Debt Limit Allocation Committee Allocation Award     | August 23, 2023   |
| TEFRA Hearing   | February 13, 2024 |
| Bond Issuance Deadline  | March 4, 2024     |

## **ANALYSIS**

The Bond Policy states the City shall be the issuer of all bonds financing multifamily housing rental developments within the City, with specified exceptions. One of these exceptions allows an alternate issuer to issue bonds for an affordable housing development within the City when there are special circumstances merited by the needs of the development and the financing.

### **Special Circumstances That Support an Exception for View at Julian Development**

#### *1) The City Does Not Have Any Subordinate Funding in View at Julian Development*

The Bond Policy was implemented, in part, to protect the City's subordinate debt. The City does not have any subordinate funding in connection with View at Julian development, so City issuance is not necessary.

View at Julian development anticipates receiving a \$90,000,000 bond issuance from the CMFA on March 4, 2024. CMFA may issue bonds for a not to exceed amount of \$125,000,000 if a supplemental allocation from the California Debt Limit Allocation Committee is requested at a future date. This development has not requested financing from the City.

*2) The City Does Not Currently Have the Capacity to Prepare for and Manage the Issuance of These Bonds*

The City received 19 Notice of Funding Availability applications in December 2021 and awarded 11 developments. The City Council approved seven of these developments for funding commitments, totaling 692 housing units. Six of these developments co-applied with the City for their California Debt Limit Allocation Committee bonds on August 9, 2022 and February 7, 2023 and received bond allocations. The City completed financing on four of the developments in spring 2023 and the other two developments in November 2023. There are four remaining Notice of Funding Availability proposers that will likely seek City Council approval for the City financing commitments in the first quarter of 2024 to prepare for California Debt Limit Allocation Committee's 2024 Round 1 or Round 2 applications. In addition, the Housing Department released a new Notice of Funding Availability on October 10, 2023 for \$50 million and anticipates releasing awards in early 2024.

The Housing Department, City Attorney's Office, and Finance Department staff are at capacity with this current pipeline and will work on the remaining five 2021 Notice of Funding Availability recipients' City multifamily housing revenue bond issuances through fiscal year 2023-2024. As such, considering the City's limited capacity for taking on any additional affordable housing issuances in the coming months and the Developer's need to close on construction financing by March 4, 2024, the City recommends a Bond Policy exception to allow this bond issuance to move forward through CMFA.

**The Alternate Bond Issuer: CMFA**

CMFA was established in 2004 under the California Government Code as a statewide joint powers authority to provide local governments and private industry access to tax-exempt low-interest financing to achieve public benefit goals. The Board of Directors of the California Foundation for Stronger Communities, a California non-profit public benefit corporation, acts as the Board of Directors for CMFA. CMFA shares a portion of its issuance fees with its member communities and donates a portion of issuance fees to the California Foundation for Stronger Communities to support local charities. It is expected that 25% of the CMFA \$82,500 issuance fee, \$20,625, will be contributed by CMFA to the City's Housing Trust Fund to support the activities of the Housing Department's Homelessness Response Division.

**TEFRA Public Hearing Requirements**

In instances where the City is not the bond issuer for a development, the Bond Policy normally requires the issuer to assume full responsibility for issuance and ongoing compliance of the bond

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issuance with federal and state tax laws. Although the City will not assume any monitoring responsibilities, the City will hold the TEFRA public hearing for the CMFA issuance.

Pursuant to Section 147(f) of the Internal Revenue Code of 1986, the issuance of the bonds by CMFA requires the City's approval because the developments are located within the territorial limits of the City. The proposed bond issuance by CMFA is classified as a private activity for purposes of the Internal Revenue Code. A qualified private activity bond is a bond issued to fund a development for a private entity that meets certain requirements under the Internal Revenue Code for the interest received by the bondholder to be excluded from gross income for federal income tax purposes.

For the interest on the bonds to be exempt from federal income tax, an "applicable elected representative" of the government unit must approve the issuance of the bond after a public hearing (TEFRA Public Hearing). Because the CMFA Board of Directors is not an elected body, the Internal Revenue Code provides that a governmental unit with elected representatives and jurisdiction over the area in which the development to be financed is located, in this case the City of San José City Council, is an applicable elected representative with respect to the bond issuance. The City Council's approval of the staff recommendation for View at Julian development is not an approval for any other purpose.

The TEFRA Public Hearing is scheduled to be held as part of the action items on February 13, 2024 San José City Council Agenda and serves as a method of notifying the community of CMFA's intent to approve and issue tax-exempt private activity bonds for View at Julian development. A public hearing notice will be published in the *San José Post-Record* on or prior to February 5, 2024, announcing the time and location of the public hearing.

Federal tax law limits the types of developments that may be funded with tax-exempt bond proceeds since the interest earned on such bonds is exempt from federal taxation. The purpose of a TEFRA public hearing is to identify a development which may subsequently receive funding from the sale of private activity tax-exempt bonds. A hearing will also provide interested individuals the opportunity to provide testimony on any matters related to such potential bond issuances, including the nature and location of View at Julian's affordable housing development.

## **EVALUATION AND FOLLOW-UP**

This memorandum presents the set of recommendations related to the City Council's approval of an exception to the City Bond Policy for the issuance of multifamily housing revenue bonds. Additionally, this action will facilitate the issuance of tax-exempt revenue bonds by CMFA and requires no follow-up involving the City Council.

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The Housing Department posts periodic reports on the status of affordable properties undergoing rehabilitation or construction on its website. If the recommended actions are approved, the progress of this development will be included in these periodic production reports.

### **COST SUMMARY/IMPLICATIONS**

Approving this recommendation will result in the City receiving a \$5,000 fee for holding the TEFRA Public Hearing. CMFA will also contribute \$20,625 of its issuance fee to the City to be deposited into the Housing Trust Fund. The staff recommendation will, however, result in the City forgoing bond administration fees for this transaction. The Bond Policy outlines the parameters for the administrative fees, including the issuance fee, an amount equal to the sum of (a) 0.50% of the first \$10,000,000 issued and (b) 0.25% of the remaining par issued and the annual monitoring fee in an amount equal to 0.125% of the original principal loan amount which may be reduced at conversion, subject to a minimum fee of \$7,500, for the 55-year term of the regulatory period. Based on these parameters and a total issuance of \$90,000,000 for View at Julian development, the City will forgo approximately \$250,000 in issuance fees and \$112,500 in monitoring fees annually. These fees would be collected only if the City issued the bond.

### **COORDINATION**

Preparation of this memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the February 13, 2024 City Council meeting.

The TEFRA Public Hearing, to be held as part of the action items on the February 13, 2024 City Council meeting, is a method of notifying members of the public about CMFA's intent to issue tax-exempt private activity bonds for the View at Julian development. Also, a public hearing notice will be published on or before February 5, 2024 in the *San José Post-Record* announcing the time and location of the TEFRA Public Hearing.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

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## **CEQA**

Categorically Exempt, File No. H21-044, CEQA Guidelines Section 15332 Infill Development Projects.

## **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

ROSALYNN HUGHEY  
Deputy City Manager and  
Acting Housing Director

/s/

RICK BRUNEAU  
Director of Finance

The principal author of this memorandum is Michael Jun, Senior Development Officer, Residential Development Division, Housing Department. For questions, please contact Qianyu Sun, Deputy Director, Debt & Treasury Management, Finance Department, at [qianyu.sun@sanjoseca.gov](mailto:qianyu.sun@sanjoseca.gov) or Ragan Henninger, Deputy Director, Housing Department, at [ragan.henninger@sanjoseca.gov](mailto:ragan.henninger@sanjoseca.gov).

ATTACHMENT – Site Map



## ATTACHMENT SITE MAP

