



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** February 7, 2017

**TO:** Carolyn Lehr, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** 3706 San Pablo Avenue Affordable Housing Project

**Public Hearing In Accordance With The Tax And Equity Fiscal Responsibility Act (“TEFRA”) In Connection With The Proposed Issuance Of Revenue Bonds By The California Municipal Finance Authority (“CMFA”), A Joint Exercise Of Powers Authority And Public Entity Of The State Of California, In An Aggregate Amount Not To Exceed \$50,000,000, For The Development Of Affordable Housing At 3706 San Pablo Avenue/1025 West MacArthur Boulevard, Emeryville, California (“Project”)**

**Resolution Of The City Council Of The City Of Emeryville Approving And Authorizing The Execution Of A Joint Exercise Of Powers Agreement Relating To The California Municipal Finance Authority And Approving The Issuance Of Revenue Bonds By The Authority To Finance An 87-Unit Affordable Multifamily Rental Housing Facility For The Benefit Of 3706 San Pablo Emeryville, L.P., Or Another Limited Partnership To Be Formed By EAH Inc. (Or An Affiliate) And Certain Other Matters Relating Thereto**

## RECOMMENDATION

Staff recommends that the City Council conduct the public hearing and adopt the above-referenced resolution relating to the 3706 San Pablo Avenue Affordable Housing Project.

## BACKGROUND

In December 2010 and June 2011, prior to its dissolution, the Emeryville Redevelopment Agency purchased 3706 San Pablo Avenue and 1025 West MacArthur Boulevard, respectively, (the “Site”) and assembled the two properties as a 1.2-acre parcel for an affordable housing development. The site was later transferred to the City of Emeryville as part of the dissolution of the Emeryville Redevelopment Agency.

On September 4, 2012, the City Council approved a Request for Qualifications/Proposals (RFQ/P) for redevelopment of the site as 100% affordable family housing. The City

received nine responses to the RFQ/P, and on October 15, 2013, the Council selected EAH as the Developer and authorized the City Manager to negotiate an Exclusive Right to Negotiate Agreement (ERN) with them.

On June 23, 2014, the City entered into an ERN with EAH. Pursuant to the terms of the ERN, EAH has been undertaking predevelopment activities for the 3706 San Pablo Avenue Project (the “Project”), including implementing a community input process on the proposed design; obtaining Planning Commission approvals; updating and submitting the development budget and pro forma to City staff for its review; submitting draft versions of the Property Management Plan, Supportive Services Plan, and Resident Services Plan; and undertaking geotechnical and environmental investigation of the Site.

On January 22, 2015, the Planning Commission unanimously adopted Resolution No. UPDR14-001 approving a Conditional Use Permit and Design Review for the Project. The Project consists of 87 units, of which one is a three-bedroom market rate manager’s unit and the other 86 units are affordable. The 86 affordable units include 4 studios, 8 one-bedroom units, 45 two-bedroom units, 22 three-bedroom units, and 7 four-bedroom units. The units are stacked flats in a four-story wood framed structure with a brick façade over a 102-space parking podium. The residential units are arranged around the perimeter of the podium, creating a central courtyard of approximately 6,750 square feet for active and passive children’s play equipment, landscaping and outdoor furniture. The Project also includes community space and approximately 7,000 square feet of commercial space along San Pablo Avenue.

With the entitlements for the Project complete, on April 16, 2015, the City Council adopted Resolution No. 15-32 and the City entered into the Ground Lease Disposition and Development Agreement (DDA) with EAH. In order to fulfill its obligations under the DDA, EAH must assemble the financing required to complete the Project.

## **DISCUSSION**

### **TEFRA Hearing**

As part of the Project financing, EAH has requested that the California Municipal Finance Authority (CMFA) serve as the municipal issuer of revenue bonds in an aggregate principal amount not to exceed \$50,000,000 (the “Bonds”). The proceeds of the Bonds will be used to finance the acquisition, construction, improvement and equipping of the Project.

The CMFA was created on January 1, 2004 pursuant to a joint exercise of powers agreement to promote economic, cultural and community development, through the financing of economic development and charitable activities throughout California. To date, over 250 municipalities, including the City of Oakland, but not the City of Emeryville, have become members of CMFA. The CMFA was formed to assist local governments, non-profit organizations and businesses with the issuance of taxable and tax-exempt

bonds aimed at improving the standard of living in California. The CMFA's representatives and its Board of Directors have considerable experience in bond financings.

In order for all or a portion of the Bonds to qualify as tax-exempt bonds, the cities of Emeryville and Oakland must each conduct a public hearing in accordance with the Tax and Equity Fiscal Responsibility Act (a "TEFRA Hearing") providing the members of the community an opportunity to speak in favor of or against the use of tax-exempt bonds for the financing of the Project. Prior to such TEFRA Hearing, reasonable notice must be provided to the members of the community. Notice of the TEFRA Hearing was provided by publication of a public notice in the Oakland Tribune on January 27, 2017. Following the close of the TEFRA Hearing, an "applicable elected representative", in this case the City Council, of the governmental unit hosting the Project must provide its approval of the issuance of the Bonds for the financing of the Project. Because the 3706 San Pablo project straddles the Emeryville/Oakland border, the City of Oakland must also hold a TEFRA Hearing. The City of Oakland has also scheduled its TEFRA Hearing for February 7, 2017.

#### Joint Exercise of Powers Agreement

In order for the CMFA to have the authority to serve as the issuer of the bonds for the Project, it is necessary for the City of Emeryville to become a member of the CMFA. A copy of the Joint Exercise of Powers Agreement is attached (Exhibit A of the attached Resolution).

The Joint Exercise of Powers Agreement specifies that the CMFA is a public entity, separate and apart from each member executing such agreement. The debts, liabilities and obligations of the CMFA do not constitute debts, liabilities or obligations of the members executing such agreement.

The Bonds to be issued by the CMFA for the Project will be the sole responsibility of the borrower (i.e. 3706 San Pablo Emeryville, L.P. or a subsidiary or affiliate of EAH), and the City will have no financial, legal, moral obligation, liability or responsibility for the Project or the repayment of the Bonds for the financing of the Project. All financing documents with respect to the issuance of the Bonds will contain clear disclaimers that the Bonds are not obligations of the City or the State of California, but are to be paid for solely from funds provided by the borrower.

There are no costs associated with membership in the CMFA and the City will in no way become exposed to any financial liability by reason of its membership in the CMFA. In addition, participation by the City in the CMFA will not impact the City's appropriations limits and will not constitute any type of indebtedness by the City. Outside of holding the TEFRA hearing, adopting the required resolution and executing the Joint Exercise of

Powers Agreement of the CMFA, no other participation or activity of the City or the City Council with respect to the issuance of the Bonds will be required.

The Joint Exercise of Powers Agreement expressly provides that any member may withdraw from such agreement upon written notice to the Board of Directors of the CMFA. In the case of the proposed bond financing for the Borrower, the City, following its execution of the Joint Exercise of Powers Agreement, could, at any time following the issuance of the Bonds, withdraw from the CMFA by providing written notice to the Board of Directors of the CMFA.

### **FISCAL IMPACT**

As noted above, membership in the CMFA is free for the City and creates no financial liability. The Board of Directors of the California Foundation for Stronger Communities, a California non-profit public benefit corporation (the “Foundation”), acts as the Board of Directors for the CMFA. Through its conduit issuance activities, the CMFA shares a portion of the issuance fees it receives with its member communities and donates a portion of these issuance fees to the Foundation for the support of local charities. With respect to the City of Emeryville, it is expected that a portion of the issuance fee attributable to the City will be granted by the CMFA to the general fund of the City. Such grant may be used for any lawful purpose of the City.

### **LEGAL CONSIDERATIONS**

The City Attorney has reviewed and approved as to form the Joint Exercise of Powers Agreement and the resolution accompanying this staff report.

**PREPARED BY:** Chadrick Smalley, Economic Development and Housing Manager

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Carolyn Lehr, City Manager

Attachments:

1. Resolution
2. Exhibit A: Joint Exercise of Powers Agreement