



Office of the City Manager

CONSENT CALENDAR
July 23, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Deputy City Manager

Subject: Affordable Housing Projects; Federal Tax Law Reimbursement Resolution

RECOMMENDATION

Adopt a Resolution allowing the City to pay certain costs of affordable and moderate income housing projects prior to the date of execution, delivery or issuance of tax-exempt bonds, and to use a portion of the proceeds of the tax-exempt bonds for reimbursement of expenditures for the projects that are paid before the date of execution, delivery or issuance of the obligations. The maximum principal amount of the obligations is expected to be \$175,000,000.

FISCAL IMPACTS OF RECOMMENDATION

Adoption of the Resolution preserves the ability of the City to issue tax-exempt bonds to reimburse itself for expenditures on affordable and moderate income housing projects. Tax-exempt bonds typically have a lower interest cost than taxable bonds.

CURRENT SITUATION AND ITS EFFECTS

The City Council is considering a number of affordable housing projects, and approved the Berkeley Way and 1601 Oxford Street projects in December 2018. Staff recommend that the City adopt a resolution declaring its intent to reimburse itself for capital expenditures on affordable housing projects from proceeds of tax-exempt Measure O Bonds and other tax-exempt obligations (such as a general fund lease, if applicable). The resolution does not commit the City to advance money for housing costs and it does not commit the City to issue the Measure O bonds as tax-exempt bonds. However, adopting the resolution in this report would preserve the ability for reimbursement of expenditures from tax-exempt bonds on affordable and moderate income housing projects.

This council item supports the City's strategic plan goal of "creating affordable housing and housing support services for our most vulnerable community members."

BACKGROUND

Federal Tax Law. It is not uncommon for public agencies to expend money on capital costs of a project (most frequently, design and engineering costs) prior to issuing bonds

to finance the project, and to reimburse themselves for those initial costs with bond proceeds.

However, the Internal Revenue Service has promulgated regulations limiting public agencies' ability to reimburse themselves with proceeds of tax-exempt bonds; among other things, the regulations require the public agency to declare its intent to reimburse itself at least 60 days prior to the capital expenditures.

Interest on tax-exempt bonds is excluded from gross income for federal income taxation, so investors will accept a lower interest rate on tax-exempt bonds than on taxable bonds.

Measure O. At an election held on November 6, 2018, the registered voters of the City approved Measure O, which authorized the issuance of \$135,000,000 of general obligation bonds ("Measure O Bonds") to create and preserve affordable housing for low-income households, working families, and individuals including teachers, seniors, veterans, the homeless, and persons with disabilities.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Adopting this resolution preserves the City's flexibility to reimburse itself from tax-exempt bonds for capital expenditures on affordable housing projects.

ALTERNATIVE ACTIONS CONSIDERED

If the City does not adopt this resolution, it would limit its ability to reimburse itself for capital expenditures on affordable housing projects with tax-exempt bonds.

CONTACT PERSON

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Attachments:

- 1: A Resolution Declaring Intention to Reimburse Expenditures from the Proceeds of Tax-Exempt Obligations to be Issued by the City

RESOLUTION NO. ##-###-N.S.

A RESOLUTION DECLARING INTENTION TO REIMBURSE
EXPENDITURES FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS
TO BE ISSUED BY THE CITY

WHEREAS, at an election held on November 6, 2018, the registered voters of the City of Berkeley (the "City") approved Measure O, which authorized the issuance of \$135,000,000 of general obligation bonds ("Measure O Bonds") to create and preserve affordable housing for low-income households, working families, and individuals including teachers, seniors, veterans, the homeless, and persons with disabilities; and

WHEREAS, the City proposes to undertake one or more affordable housing projects (the "Projects") and may finance all or a portion of the projects with a tax-exempt lease (the "Lease") or tax-exempt Measure O Bonds (together with the Lease, the "Obligations"), and to use a portion of the proceeds of the Obligations to reimburse expenditures made for the project prior to the issuance of the Obligations;

WHEREAS, United States Income Tax Regulations section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, one of which is a requirement that prior to the payment of any such expenditure, the issuer declares an intention to reimburse such expenditure; and

WHEREAS, it is in the public interest and for the public benefit that the City declares its official intent to reimburse the expenditures referenced herein.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves the following:

Section 1. The City intends to cause the Obligations to be executed, delivered or issued for the purpose of paying all or a portion of the costs of the Projects.

Section 2. The City hereby declares that it reasonably expects (i) to pay certain costs of the Projects prior to the date of execution, delivery or issuance of the Obligations, and (ii) to use a portion of the proceeds of the Obligations for reimbursement of expenditures for the Projects that are paid before the date of execution, delivery or issuance of the Obligations.

Section 3. The maximum principal amount of the Obligations is expected to be \$175,000,000.

