CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Maria Öberg
Erik L. Soliván

SUBJECT: **See Below**

DATE: April 7, 2025

Approved [signature] Date: 4/15/25

COUNCIL DISTRICT: Citywide

SUBJECT: Proposed Revisions to City Council Policy 1-16 - Policy Related to the Issuance of Multifamily Housing Revenue Bonds and Amendment to Section 5.06.430 of Chapter 5.06, Title 5 of City of San José Municipal Code Related to the Authority of the Director of Finance

RECOMMENDATION

(a) Accept the annual review, adopt a resolution amending Council Policy 1-16, Policy for the Issuance of Multifamily Housing Revenue Bonds to enable external conduit issuers to issue bonds for multifamily housing rental projects within the City of San José, and allow for the Director of Finance to hold Tax Equity and Fiscal Responsibility Act hearings for conduit issuers.

(b) Adopt an ordinance amending Section 5.06.430 of Chapter 5.06, Title 5, of the City of San José Municipal Code to broaden the Director of Finance's authority to hold Tax Equity and Fiscal Responsibility Act hearings on the issuance of tax-exempt bonds within the City of San José to finance affordable housing projects.

(c) Direct staff to return to City Council in the fall of 2025 with a comprehensive revision to Council Policy 1-16, Policy for the Issuance of Multifamily Housing Revenue Bonds.

SUMMARY AND OUTCOME

The proposed ordinance and policy revisions will enable external conduit issuers to issue bonds for multifamily housing rental projects within the City of San José and allow for the Director of Finance to hold Tax Equity and Fiscal Responsibility Act (TEFRA) hearings for conduit issuers. A comprehensive revision of the Policy and underlying municipal code for the Issuance of Multifamily Housing Revenue Bonds (Policy) will be brought to City Council in the fall of 2025

BACKGROUND

The Policy was adopted by the City Council to facilitate the development of affordable housing in the City and address bond financing related matters including permitted issuers, the City's financing process, City fees, credit considerations, and refunding or restructuring of the outstanding bonds.

On January 28, 2025, the Mayor and City Council directed staff to return to the City Council with modifications to City Council Policy 1-16 that will allow an affordable housing developer to use an approved bond issuer in the State of California with the intent of reducing transactional and procedural expenses, enabling affordable housing to be built faster and at a lower cost.[1]

ANALYSIS

Staff has completed the review of the Policy and recommends a revision to certain sections of the Policy including, but not limited to, General Matters. The proposed revisions are redlined in the **Attachment** - Policy for the Issuance of Multifamily Housing Revenue Bonds - Redlined.

California Debt Limit Allocation Committee Regulations Section 5031(c) requires the Policy be reviewed by counsel having expertise with the federal and state laws pertaining to the issuance or conversion and post-closing compliance of private activity conduit bonds. The City Attorney's Office has Anzel Galvan LLP, external bond counsel with the required expertise, conduct a formal review of revisions to the Policy documented by a letter to be provided to the California Debt Limit Allocation Committee.

Permit Bond Issuance by External Conduit Issuers

The Policy currently requires the City to be the issuer of all bonds financing multifamily housing rental projects unless an exception applies. The City has been asked from time to time for special circumstance exceptions that would permit the bonds to be issued by external agencies, such as the California Housing Financing Agency and the California Municipal Finance Authority, which are established conduit issuers of multifamily housing revenue bonds. Such exceptions require City Council approval.

---

[1] Memorandum from Mayor Matt Mahan, Vice Mayor Rosemary Kamei, Council Members Pam Foley and David Cohen

The proposed Policy revision eliminates the requirement for the City to be the bond issuer whether or not the City provides funding to a project, allowing bonds to be issued by the City or an external conduit issuer authorized by the State of California or organized under the Joint Exercise of Powers Act, as codified in California Government Code Section 6500 et seq., without the need for City Council approval. The City shall be the co-administrator of the bond regulatory agreement for bonds issued by external agencies for the purpose of monitoring the project owner's performance. Such performance monitoring is already required for the benefit of the issuer under the bond regulatory agreement and the co-administrator shall have the same rights accorded to the issuer under that agreement. The City will hold the TEFRA hearing if the external agency does not have the authority to hold the hearing.

The Director of Finance Authority to Hold the Tax Equity and Fiscal Responsibility Act Hearings

The San José Municipal Code Section 5.06.430(A) states, "The director of finance is authorized to hold TEFRA hearings on the City's proposed issuance of tax-exempt bonds to finance affordable housing projects, on an as-needed basis and in accordance with notice and other requirements established by the IRS Codes".

Currently, all TEFRA hearings for housing bonds issued by external conduit issuers are heard by the City Council or delegated by City Council to the Director of Finance on an as-needed (project-by-project) basis. In the past years, staff have sought explicit authorization from the City Council to permit the Director of Finance to conduct these TEFRA hearings, typically in conjunction with requests for Policy exceptions.

The proposed Ordinance revision would delegate this responsibility to the Director of Finance. The Policy is revised to be consistent with the proposed change to the San José Municipal Code Section 5.06.430(A).

Technical "Clean-ups"

Several technical clean-ups are recommended for the proposed Policy revisions.

EVALUATION AND FOLLOW-UP

The Finance Department and Housing Department staff review the Policy periodically to ensure consistency with the City's debt management objectives and industry developments relating to the issuance of multifamily housing revenue bonds and to maintain compliance with federal and state regulatory requirements. Finance and Housing staff will return to City Council in the fall of 2025 with a comprehensive revision to the Policy and applicable municipal codes in the context of current and anticipated Housing operational needs.

Staff from the Finance Department and Housing Department will be available to answer questions about the Policy at the City Council meeting on April 29, 2025.

COORDINATION

This report has been prepared in coordination 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 April 29, 2025 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

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/
Maria Öberg
Director of Finance

/s/
Erik L. Soliván
Housing Director

For questions, please contact Qianyu Sun, Deputy Director of Finance – Debt and Treasury Management, at qianyu.sun@sanjoseca.gov or (408) 535-7832.

Attachment – Council Policy 1-16 Policy for the Issuance of Multifamily Housing Revenue Bonds - Redlined

EXHIBIT A

City of San José, California

COUNCIL POLICY

TITLE POLICY FOR THE ISSUANCE OF MULTIFAMILYHOUSING REVENUE BONDS	**PAGE** 1 of 14	**POLICY NUMBER** 1-16
EFFECTIVE DATE June 11, 2002	**REVISED DATE** [~~March 27, 2018~~April XX, 2025]	

APPROVED BY COUNCIL ACTION
June 11, 2002, Item 3.7, Resolution No. 71023; December 6, 2005, Item 3.5, addition of TEFRA Fee and amendment of Annual Monitoring Fee policy; Reaffirmed March 27, 2018, Item 4.1, Resolution No. 78538. April XX, 2025, Item 3.5, Resolution No. RES2025-XXX

GENERAL MATTERS

I. ISSUER

~~The City of San José (the "City") shall be the issuer of all b~~Bonds financing multifamily housing rental projects (a "Project" or "Projects") within the City of San José (the "City") may be issued by the City or external conduit issuers authorized by the State of California or organized under the Joint Exercise of Powers Act, as codified in California Government Code Section 6500. ~~, except as provided below. The City's Housing Department and Finance Department will consider other issuing agencies as follows:~~

A. Non-City Conduit Issuers

Where the City is not the issuer of bonds, it shall be the City's policy to require:

1. the non-City issuer to assume full responsibility for issuance and ongoing compliance of the bond issue with federal tax and state laws;

2. the City to serve as the co-administrator of the bond regulatory agreement for the purposes of monitoring the Project Sponsor's performance which includes, but is not limited to, the following obligations on part of Project Sponsor and non-City issuer:

    a. the Project Sponsor shall deliver to the City all necessary notices, certificates, and reports, as required for the bond administrator under the regulatory agreement.

    b. the City shall have the same rights accorded to the non-City issuer under the regulatory agreement, including, but not limited to, notice, cure and enforcement rights.

c. the Project Sponsor and the non-City issuer shall provide the City with information requested in connection with the Project Sponsor's duties and responsibilities under the regulatory agreement, ensuring the affordability of the Project and the maintenance of the Project in a safe and habitable condition.

3. The Project Sponsor shall indemnify, hold harmless and defend the City, as the co-administrator of the regulatory agreement, against liability events arising out of or based upon the regulatory agreement.

B. TEFRA Hearing

Where feasible, the City shall seek to hold a public hearing required under Section 147(f) of the Internal Revenue Code of 1986, better known as the Tax Equity and Fiscal Responsibility Act ("TEFRA") hearing, for such Project.

The Director of Finance will hold TEFRA hearings for Projects with bonds issued by non-City conduit issuers.

~~**A. The Redevelopment Agency**~~
~~Not applicable.~~

~~**B. ABAG, CSCDA, Other Conduits**~~

~~The City may agree to the issuance of bonds by the Association of Bay Area Governments ("ABAG"), California Statewide Community Development Authority ("CSCDA") or a similar issuing conduit provided that the City is not making a loan or grant to the Project and the Project is one of multiple projects being financed by the Project Sponsor through such issuing conduit agency in the same California Debt Limit Allocation Committee ("CDLAC") round under a similar financing program so as to result in economies of issuance.~~

~~**C. Special Circumstances**~~

~~Another agency may issue bonds when merited by special circumstances of the Project and the financing.~~

~~Where the City is not the issuer of bonds for a Project, it shall be the City's policy to require the issuer to assume full responsibility for issuance and on-going compliance of the bond issue with federal tax and state laws. Where feasible, however, the City shall seek to hold The Equity and Fiscal Responsibility Act of 1986 Hearing, better known as the "TEFRA" Hearing for such Project.~~

II. FINANCING TEAM

The City shall select the financing team for all multifamily housing revenue bonds issued by the City. The Finance Department is responsible for selecting the ~~financial advisor~~municipal advisor, trustee and the investment banker/ underwriter (assuming a negotiated public sale of bonds). The City Attorney's Office is responsible for selecting the bond counsel firm. The ~~financial advisor~~municipal advisor, investment banker and bond counsel shall be selected from approved lists determined from time to time by a request for qualifications/proposal process.

III. COORDINATION AMONG CITY DEPARTMENTS

The City recognizes that the issuance of housing bonds entails a coordinated effort among the Housing Department, Finance Department and City Attorney's Office. The Housing Department shall ensure that the Finance Department and the City Attorney's Office are provided with regular updates on projects that may involve the issuance of bonds.

THE FINANCING PROCESS

The following financing process applies when the City issues multifamily housing revenue bonds.

I. INITIAL MEETING WITH PROJECT SPONSOR

A. Prior Due Diligence

Prior to arranging an initial meeting with the Project Sponsor, the Housing Department shall perform initial due diligence on the Project Sponsor, including whether the Project Sponsor has ever failed to use an allocation from CDLAC and whether the Project Sponsor has failed to comply with the terms of any other City financings or City loans.

B. Determination of Readiness

Following the initial meeting, City representatives shall determine if the project is in a state of sufficient "readiness" to proceed with the CDLAC application process. This includes the status of the project in terms of the development process. In general, a project will be deemed "not ready" if the discretionary planning approvals will not have been completed by the time of the CDLAC application.

C. Selection of Financing Team

Following a determination of readiness, the Finance Department ~~and City Attorney~~ shall recommend the ~~financial advisor~~municipal advisor and~~,~~ underwriter (if applicable) and City Attorney shall recommend the bond counsel, as the case may be, for each project.

II. DEPARTMENTAL APPROVALS

Pursuant to the Delegation of Authority by the City Council, both the City's Directors of Finance and Housing must approve each Project, the financing, and the filing of a CDLAC application before the City can make an application to CDLAC for private activity bond allocation. The approval of the Directors of Finance and Housing ~~Directors~~ shall be evidenced by a jointly signed "Notice to Proceed" addressed to the Project Sponsor. The Notice to Proceed shall describe the project, identify the developer or Project Sponsor, the affordability mix, the proposed plan of finance and the amount of bond funding requested.

A. Inducement ~~Resolution~~Declaration

The City Attorney's Office will be responsible for preparing a ~~resolution for~~ joint ~~approval~~ declaration by the Directors of Finance and Housing. The ~~resolution~~ declaration will:

1. Memorialize the ~~Council's~~ City's official intent to issue ~~the debt~~tax-exempt bonds and reimburse ~~in order to induce others to provide project financing~~ expenditures for the acquisition, construction/rehabilitation and development of a Project with the proceeds thereof for purposes of U.S. Treasury Regulations Section 1.150-2;

2. Authorize the filing of a CDLAC application; and

3. Authorize the execution of a Deposit and Escrow Agreement.

B. TEFRA HEARING

The TEFRA hearing will be held before the Director of Finance on the date specified in the TEFRA Notice. The Director of Finance has the discretion to have the TEFRA hearing held by the City Council.

III. CDLAC APPLICATIONS

A. Description

Before the City is legally able to issue private activity tax-exempt bonds for a project, an application must be filed with CDLAC ~~in Sacramento~~ and an allocation of the State ceiling on qualified private activity bonds must be approved by CDLAC.

B. City to File

The City is the applicant to CDLAC for each project to be financed with tax-exempt bonds issued by the City. The Housing Department will file all applications to CDLAC on behalf of project sponsors.

C. Project Sponsor to Prepare Application

Each project sponsor shall take responsibility for preparing the CDLAC application for its project with input from City representatives, the City's ~~financial advisor~~municipal advisor and bond counsel.

D. Deposit and Escrow Agreement

The City will not file a Project Sponsor's CDLAC application unless the Project Sponsor executes a Deposit and Escrow Agreement and makes the necessary deposits specified in this Agreement. The Deposit and Escrow Agreement shall contain the items identified below. It shall be the responsibility of the Housing Department to see that all requirements under the Deposit and Escrow Agreement are met.

1. CDLAC Performance Deposit

   The Deposit and Escrow Agreement must require the payment of the CDLAC performance deposit, provided that current CDLAC rules require the payment of such deposit to the issuer.

2. City of San José Performance Deposit

   In addition to the CDLAC performance deposit, the Deposit and Escrow Agreement shall require the Project Sponsor to deposit $50,000 with the City as a City of San José performance deposit. This deposit shall be forfeited in the event that the City, on behalf of the Project Sponsor, receives an allocation but does not issue bonds. The deposit may be applied to pay costs of issuance or returned to the Project Sponsor as soon as practicable. By agreement between the City and the Project Sponsor, the Project Sponsor may designate its City loan as the source of payment in the event of forfeiture.

3. Financing Team Fees

The Deposit and Escrow Agreement shall identify, if available, the fees of the bond counsel, ~~financial advisor~~municipal advisor, and underwriter (if applicable). It shall be the responsibility of the Finance Department and the City Attorney's Office to identify these fees.

IV. COUNCIL APPROVAL

A. Staff Report

The Finance Department, in conjunction with the Housing Department and City Attorney's Office, shall prepare a staff report recommending final Council approval for a bond issuance~~e~~ by the City. The staff report shall be submitted to the City Manager's Office in accordance with the timing requirements of the then-current City procedures.

The staff report shall specify the approvals that are recommended, provide background on the project being financed, describe the financing structure, ~~indicate any exceptions to the City's investment policy,~~ describe the financing documents to be approved, identify the financing team participants, and seek approval of consultant agreements and financing participants that have not previously been approved by Council. The staff report should indicate if a separate City loan is being provided. However, the terms of that loan should be discussed in a separate staff report which, whenever possible, shall be submitted for the same agenda. The staff report shall be signed by the Directors of Finance and Housing.

The staff report should be submitted only after the major transaction terms (e.g., financing structure, security provisions, bond amount, maximum maturity, etc.) are identified and agreed to by the parties. The staff report may note that the bond issuance~~e~~ is contingent upon certain other approvals and may identify certain issues to be resolved at a later time.

B. Substantially Final Documents

The City Council shall approve documents that are "substantially final" documents. Documents are in "substantially final" form if they identify the final security provisions and financing structure for the transaction. The City Attorney's Office shall determine whether documentation is in substantially final form.

C. Council Meeting

The Council meeting shall occur on a date after which all approvals from major financial participants (e.g., credit enhancement provider, bond purchaser, tax credit investor) have been obtained. At the discretion of the City Attorney and Finance Department, the Council may proceed with its approval process without such other final approvals if: (1) such final approval is likely; (2) the Council's approval is subject to such other party's final approval; and (3) the Council approval process cannot be delayed without jeopardizing the financing.

V. BOND SALE AND CLOSING

A. Timing

The bond sale and closing may commence only after the Council authorizes the bond issuance, including the distribution of a Preliminary Official Statement, if applicable.

B. Investment Agreements

If authorized by the Council, the Project Sponsor, through its representative, which may include the underwriter or ~~financial advisor~~municipal advisor, may solicit investment agreement providers for the purpose of reinvesting bond proceeds and revenues. The investment agreement providers must meet the City's requirements and the requirements in the bond resolution and trust indenture for the bonds. Bond counsel and the ~~financial advisor~~municipal advisor shall review the investment agreement solicitation forms, the eligible providers, and the investment agreements.

C. Payment of Issuance Fee

The City's issuance fee shall be funded from the Costs of Issuance Fund held by the Trustee.

D. ~~Information Memorandum~~Report to Council

~~Promptly after the issuance of all bonds for a CDLAC round, the~~The City Finance Department shall report activities related to multifamily housing revenue bonds in the quarterly Debt Management Report to the assigned City Council Committee and the City Council. ~~prepare an information memorandum summarizing the salient points of each bond issue.~~

CITY FEES

I. TEFRA HEARING FEE

The City shall charge a fee of $5,000 for the administrative costs associated with holding a TEFRA hearing relating to a Project. The fee shall be payable prior to the date that notice of the TEFRA hearing is published. No separate TEFRA hearing fee shall be charged if the City ~~or Redevelopment Agency~~ is issuing the bonds for the Project.

II. ISSUANCE FEE

The City shall charge a fee for the administrative costs associated with issuing the bonds for a Project Sponsor. The fee shall be payable at bond closing and may be contingent on the bond sale. The issuance fee shall be based on the total amount of the bonds (both tax-exempt and taxable) to be issued in accordance with the following sliding scale:

$0 to $10 million: 0.5% of the principal amount of bonds issued, with a minimum fee of $30,000.

Over $10 million: 0.5% of the first $10 million principal amount of bonds; 0.25% of any additional amount.

III. ANNUAL MONITORING FEE

The City shall charge an annual fee for monitoring the restricted units. The fee shall be in an amount equal to 0.125% of the original principal amount of tax-exempt bonds issued. Except for non-profit or government agency Project Sponsors, the fee shall not be reduced until all of the tax-exempt bonds are retired and the bond regulatory agreement ceases to have validity or is no longer in effect, at which time it will terminate. Upon conversion to permanent financing, a nonprofit or government agency Project Sponsor, may have a reduction in their annual fee to 0.125% of the permanent bond amount after conversion subject, to a minimum annual fee of $7,500.

The City annual monitoring fee shall be paid "above the line," i.e., on a parity with bond debt service and trustee fees. This parity provides the greatest assurance that the City's fee will be paid, although it may reduce the amount that the Project Sponsor's lender may be willing to underwrite. The City may determine, at its sole discretion, to subordinate all or a portion of its annual fee to bond debt service only when the Housing Department has made a substantial loan to the Project, so long as the Project Sponsor provides adequate assurance of the payment of such fees. The City shall not subordinate its fee in circumstances where no City funds are subsidizing the Project.

CREDIT CONSIDERATIONS

I. CREDIT ENHANCEMENT

A. General Policy

It shall be the general policy of the City to encourage the use of credit enhancement for bonds issued by the City. Credit enhancement shall be a requirement for any multifamily bonds that are publicly distributed. The minimum rating on such credit enhancement shall be "A" or higher by Moody's, Standard & Poor's, and/or Fitch. This policy shall be subject to the exceptions described below.

B. Forms of Credit Enhancement

Credit enhancement may be in the form of a bank letter of credit, bond insurance, surety, financial guaranty, mortgage-backed security (e.g., Fannie Mae, Freddie Mac or Ginnie Mae) or other type of credit enhancement approved by the market.

If the City has not previously issued bonds with a particular kind of credit enhancement, the Finance Department and ~~financial advisor~~municipal advisor shall determine whether such credit enhancement is acceptable and whether marketing restrictions shall be imposed.

C. Project Sponsor Responsibility

It shall be the responsibility of the Project Sponsor to obtain and pay for the costs of credit enhancement. The City will assume no responsibility therefor.

II. NON-CREDIT ENHANCED BONDS

A. General Policy

It shall be the general policy of the City to require bonds that are not secured with credit enhancement to be sold through private placement or through a limited public offering to institutional or accredited investors. As an exception to this policy, the City may authorize the public distribution of non-credit enhanced bonds that are rated at least in the "A" category by Moody's, Standard & Poor's, and/or Fitch, after consultation with the underwriter and ~~financial advisor~~municipal advisor. In connection with such authorization, the City shall consider the sophistication of the Project Sponsor, its financial resources, commitment to the community and other factors.

B. Additional Requirements for Non-Rated Bonds

Non-rated bonds must comply with the following additional requirements:

1. Minimum Denominations and Number of Bondholders

   In order to limit the transferability of non-rated bonds, the City shall seek minimum denominations of at least $100,000. In addition, the City may also limit the number of bondholders to further limit the transferability of non-rated bonds.

2. Qualified Institutional Buyer ("QIB") Letter

   The bond purchaser in a private placement or limited public offering must certify that it is a qualified or accredited investor (a "big boy letter"). Such letter must be signed by subsequent bond purchasers so long as the bonds remain unrated.

REFUNDING/RESTRUCTURING/REMARKETING

I. General

The City has issued both fixed rate and variable rate multifamily bonds. On occasion, the Project Sponsor may ask the City to refund those bonds to lower the interest rate, to remarket the bonds with a new credit enhancement, and/or to remarket the bonds as fixed rate bonds. The Project Sponsor will be responsible for all costs and fees related to the refunding.

II. Optional Refunding

A. Reasons to Refund Outstanding Bonds

A Project Sponsor may ask the City to refund its outstanding bonds for one of several reasons:

1. Lower the interest rate on fixed rate bonds at the call date (through the issuance of fixed rate or variable rate refunding bonds);
2. Substitute a new credit structure that was not expressly provided for in the existing documents; or
3. Restructure the existing debt.

B. Financing Team

The City shall select the financing team to implement the refunding. Where possible and if desired by the City, the financing team shall consist of the bond counsel, ~~financial advisor~~municipal advisor and, if applicable, underwriter that were retained for the original financing.

C. Legal/Documentation

New documents shall be prepared to meet the City's then-current legal, credit, financial, and procedural requirements. The City shall follow the documentation process applicable to new bonds. Because the City's primary purpose in issuing multifamily housing bonds is to preserve and increase the supply of affordable housing in the City, if federal or state affordability, income, and/or rent restrictions have changed between the time of the original financing and the refunding bonds, the more restrictive provisions shall apply. If new requirements are more restrictive than existing requirements, the new requirements shall be applied in phases to new tenants over a period of time, not to exceed five (5) years, as determined by the Housing Department staff and the City Attorney.

D. Bond Maturity

Subject to the approval of bond counsel, the final maturity of the refunding bonds may be later than the final maturity of the prior bonds so as to allow the Project Sponsor the longest possible period for repayment under federal law.

E. Compliance

The City shall not proceed with a refunding if the Project is not in compliance with the current regulatory agreement, continuing disclosure reporting, or arbitrage rebate reporting and payment.

F. Fees

The Project Sponsor shall pay the following City fees in connection with the refunding:

1. Issuance Fee

   The City shall charge an issuance fee in accordance with the City's current policy on issuance fees for new projects.

2. Annual Monitoring Fee

   The City shall continue to charge the same annual fee for monitoring the Project as for the original bonds. Such fee shall not be reduced even if the refunding bond size is lower.

G. Cash Flow Savings

Cash flow savings from refunding fixed rate bonds at a lower fixed interest rate or a variable rate shall be applied as follows:

1. Projects with a City Loan

   A portion of the projected cash flow savings, to be determined by the Housing Department, shall be used to accelerate the repayment of the City loan, subject to restrictions in existing documents.

2. Projects with No City Loan

   The City Housing Department shall require the Project Sponsor to provide affordability or other financial concessions to the City as a condition for refunding. Such concessions may include increasing the percentage of affordable units and extending the term of affordability restrictions.

H. City Council Approval

All refunding bonds and related legal documentation must be approved by the City Council in accordance with the procedures set for the issuance of new bonds.

III. DEFAULT REFUNDING

A. General

In the event of a default on the bonds or the underlying mortgage, a fixed rate bond issue may be refundable in advance of the call date without premium. The issue does not arise with variable rate bonds, as such bonds are callable at any time. Default refunding bonds are an area of potential sensitivity for the City as it will not want a developer to manufacture a default to take advantage of more favorable interest rates.

B. Financing Team

The City shall select the financing team to implement the refunding. Where possible and if desired by the City, the financing team shall consist of the bond counsel, ~~financial advisor~~municipal advisor and, if applicable, underwriter that were retained for the original financing.

C. Confirming the Default

To confirm a default, the City must receive a notice from an independent party, such as the bond trustee. If applicable, notice of cash flow insufficiency is then filed as part of the Continuing Disclosure Certificate. In addition, the City shall retain, at the expense of the Project Sponsor, an independent feasibility consultant to review the default. The City will proceed with the transaction only if a review by staff and the independent consultant indicates that:

1. Net cash flow from the Project is currently insufficient to pay debt service on the outstanding bonds and is unlikely to do so within a reasonable period;

2. The Project is being operated in accordance with reasonable real estate management practices and the net operating income has not been artificially reduced by failing to rent units actively, inflating operating expenses, or other reasons within the control of the Project Sponsor; and

3. The Project Sponsor has provided audited operating statements, Continuing Disclosure filings (if applicable), and arbitrage rebate reports for all years, has cooperated in providing requested information, and has used operating income and other resources to pay debt service.

D. Additional Requirements

1. Indemnification

   The City shall be indemnified as to any costs incurred as a result of the refunding. Such indemnification shall come from a party or parties with adequate net worth or other financial capacity and whose assets are not limited to ownership of the Project.

2. Future Debt Coverage

   The analysis of the feasibility consultant shall show that, upon the refunding, the Project's current net operating income will be at least sufficient to pay the revised debt service plus a reasonable coverage ratio (or adequate non-bond proceeds will be available to cover such deficiencies). In other words, the City shall not proceed with the refunding if it will not cure the cash flow problem.

3. Bond Counsel Review

   Bond counsel shall have determined that the original bond and disclosure documents provided adequate disclosure of such a potential redemption and that the provisions of the prior documents have been satisfied.

4. Compliance

   The City shall not proceed with a refunding if the Project is not in compliance with the current regulatory agreement, continuing disclosure reporting, or arbitrage rebate reporting and payment.

E. Fees

The fees and expenses of the feasibility consultant, ~~financial advisor~~municipal advisor and bond counsel shall not be contingent on their findings or completion of a refunding. The City shall require that the Project Sponsor deposit the estimated fees and expenses with the City prior to the commencement of any analysis.

F. Affordability Restrictions

The affordability requirements for a default refunding shall be the same as those listed under "Legal/Documentation" for an optional refunding.

G. City Council Approval.

1. Initial City Council Approval

   The Finance Department, in conjunction with the Housing Department and City Attorney's Office, shall obtain initial City Council approval prior to proceeding with any documentation for a default refunding. Initial City Council approval shall occur after the independent feasibility consultant performs the initial analysis, a default is confirmed, and it is determined that a refunding will cure the cash flow problem.

2. Final City Council Approval

The Finance Department, in conjunction with the Housing Department and City Attorney's Office, shall obtain final City Council authorizing the bond issue and execution of the relevant documentation.

H. City Fees

The City shall charge the same issuance fee and annual monitoring fee that it otherwise would in conjunction with a new bond issue.

IV. REMARKETING

A. General

A Project Sponsor may ask the City to remarket outstanding bonds under one of three basic scenarios:(1) converting variable rate bonds to fixed rate bonds; (2) a mandatory tender of bonds; or (3) substituting a new credit enhancement for the bonds in accordance with existing documentation.

B. Financing Team

The City shall select the financing team to implement the refunding. Where possible and if desired by the City, the financing team shall consist of the bond counsel, ~~financial advisor~~municipal advisor and, if applicable, underwriter that were retained for the original financing.

C. Legal/Documentation

A remarketing of fixed rate bonds will not require new legal documentation. However, the City Attorney's Office, in conjunction with bond counsel, may require a new disclosure document. A remarketing of bonds with a new credit enhancement may require amended documentation, as well as a new disclosure document, as determined by the City Attorney's Office and bond counsel.

D. Fees

A remarketing will not result in the payment of additional or revised City issuance or annual fees. However, the City shall charge a fee of $10,000 to $25,000 to the Project Sponsor for administrative costs.

E. Council Approval

All remarketed bonds and any related documentation shall be approved by the City Council prior to any remarketing.