



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey
Rick Bruneau

SUBJECT: SEE BELOW

DATE: October 23, 2023

Approved 

Date
10/31/23

COUNCIL DISTRICT: 6

SUBJECT: APPROVAL OF AN EXCEPTION TO THE CITY MULTIFAMILY HOUSING REVENUE BOND POLICY ALLOWING MODERA THE ALAMEDA 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 THE ACQUISITION OF MODERA THE ALAMEDA 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 Modera The Alameda due to special circumstances, thereby allowing the California Municipal Finance Authority to issue the bonds as qualified 501(c)(3) bonds.
- (b) Hold a Tax Equity and Fiscal Responsibility Act of 1982 public hearing for the issuance of not to exceed \$100,000,000 of tax-exempt multifamily housing revenue bonds by the California Municipal Finance Authority, to finance the acquisition of a 168-unit apartment complex located at 787 The Alameda in San José by Catalyst Impact Fund, a California nonprofit public benefit corporation or an affiliate; and to pay certain expenses incurred in connection with the issuance of the bonds.
- (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 not to exceed \$100,000,000 to finance the acquisition of an existing building located at 787 The Alameda, and to pay certain expenses incurred in connection with the issuance of the bonds.

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SUMMARY AND OUTCOME

Approval of this recommendation will enable the Modera The Alameda development (Modera development), an existing market-rate development, to move forward with the California Municipal Finance Authority (CMFA) as its alternate bond issuer resulting in the acquisition, rehabilitation, improvement, and equipping of 167 apartments and one manager's unit to transition to an affordable housing development. The Tax Equity and Fiscal Responsibility Act (TEFRA) hearing provides an opportunity for the public to review and provide comments on the issuance of up to \$100,000,000 of tax-exempt revenue bonds for the acquisition of the existing Modera development. Additionally, approval of the recommended action will authorize CMFA to issue tax-exempt 501(c)(3) bonds to finance the acquisition of the Modera development, with no City funding, transitioning 167 market-rate units and one restricted manager's unit to deed-restricted affordable apartments. This will allow the Modera development to move forward with its current financing plan and create much needed affordable housing.

CMFA and the developer, Catalyst Impact Fund, a California nonprofit public benefit corporation, (Developer) agreed the regulatory agreement shall include the City as an administrator. This agreement will empower the City to monitor and enforce compliance with affordability requirements and health and safety regulations over the 75-year term for the regulatory agreement. The purpose of this agreement is to ensure that the Modera development remains affordable and adequately maintained over the long term.

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.) Staff's Housing Catalyst Work Plan incorporates programs and strategies to produce and preserve affordable housing in alignment with the 2023-2031 Housing Element.

The City adopted a Multifamily Housing Revenue Bond Policy in 2002, City Council Policy 1-16¹, (Bond Policy) to provide guidance when the City acts as the issuer of multifamily housing revenue bonds. The Bond Policy requires that the City serve as the bond issuer for financing affordable housing developments unless the City Council approves an exception. The Bond Policy allows an alternate bond issuer under the following circumstances:

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

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- 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 issue with federal tax and state laws; and
- If there are special circumstances merited by the needs of the project and the financing.

Qualified 501(c)(3) Bonds

Qualified 501(c)(3) bonds are regulated by Internal Revenue Code Section 145. All property provided by the bond proceeds is to be owned by a 501(c)(3) organization or a government unit, and the bond issuance must not exceed \$150 million. Qualified 501(c)(3) bonds are not subject to state tax-exempt bond volume cap and ineligible for low-income housing tax credits.

The Affordable Housing Development

Modera Development

The Modera development is an existing market-rate development located at 787 The Alameda, a site map is included as **Attachment A**. The Developer proposes acquiring the Modera development and transitioning the site to a 100% affordable housing development for a period of 75 years. This transition will exclude the property from the tax roll and reduce property tax revenue by approximate \$1 million for the City and other taxing entities. The Modera development contains 18,151 square feet of ground-floor commercial space that is currently 100% leased. The Developer anticipates the acquisition will occur on November 29, 2023, but no later than January 5, 2024. A detailed overview of the timeline is shown in **Attachment B**.

Market Rate to Affordable Transition

To avoid displacement of any current market-rate residents, units will transition to affordable upon move-out, and existing residents who income-qualify will be offered affordable rates upon lease renewal. The Developer anticipates that it will take approximately two years for the Modera development to transition to 100% affordable housing. The 168-unit development will offer 34 units at 50% area median income (AMI), comprised of 21 one-bedroom apartments, 12 two-bedroom apartments, and one three-bedroom apartment. The remaining 134 units will be restricted to 80% AMI, comprised of one studio apartment, 81 one-bedroom apartments, 47 two-bedroom apartments, four three-bedroom apartments, and one manager's unit. Based on California's Department of Housing and Community Development occupancy guidelines, the 2023 income limit for households with 50% AMI is \$62,450-\$89,200 and the 80% AMI is \$96,000-\$137,100. A detailed breakdown of the units by AMI and the respective rents can be found below in **Table 1**.

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Table 1: Modera The Alameda Affordability Unit Mix and AMI Levels

Unit Size	50% AMI			80% AMI			Total
	Units	Max Income	Rent Limits	Units	Max Income	Rent Limits	
Studio	0	\$62,450	\$1,561	1	\$96,000	\$2,400	1
1-BD	21	\$71,400	\$1,785	81	\$109,700	\$2,743	102
2-BD	12	\$80,300	\$2,008	47	\$123,400	\$3,085	59
3-BD	1	\$89,200	\$2,230	4	\$137,100	\$3,428	5
Manager's Unit	N/A	N/A	N/A	1	\$109,700	\$2,743	1
Total	34			134			168

ANALYSIS

The Bond Policy states that 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 that merit the needs of the development and the financing. The special circumstances that support an exception for the Modera development are (1) the development does not have any City funding, and (2) the lack of City staff capacity to issue the bonds in the necessary timeline for closing on the acquisition.

The Basis for Multifamily Housing Revenue Bonds Policy Exception

The following reasons are the basis for staff’s recommendation for an exception to the Bond Policy to allow the Modera development to request the policy exception to complete assembling its financing.

1) The City Does Not Have Any Subordinate Funding in the Modera 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 the Modera development, therefore City issuance is not necessary.

As requested by the Developer on September 22, 2023, the Modera development anticipates that CMFA will issue \$100,000,000 of unrated tax-exempt 501(c)(3) bonds by public offering. The City’s Bond Policy requires credit enhancement and minimum “A” rating by Moody, Standard and Poor, and /or Fitch for publicly distributed housing bonds, while CMFA is not subject to such requirements.

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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. All six received a bond allocation award. The City recently closed financing on four of these developments in spring 2023. The remaining two applicants received their awards as announced on May 10, 2023. These two developments will need to close on financing by November 2023. There are four remaining Notice of Funding Availability proposers that will likely seek City Council approval for their City financing commitments in the first quarter of 2024, to prepare for 2024 Round 1 or 2 California Debt Limit Allocation Committee applications.

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 throughout Fiscal Year 2023-2024. These transactions will provide new revenue to the City. As such, considering the City's limited capacity for taking on any additional affordable housing issuances in 2023 and the Modera Developer's need to obtain acquisition financing quickly through CMFA's 501(c)(3) program, the City recommends a Bond Policy exception to allow this bond issuance through CMFA. In addition, the City's Housing Department released a new Notice of Funding Availability on October 10, 2023 for \$50 million and anticipates releasing awards in early 2024.

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 issuance fee, or \$23,600, will be contributed by CMFA to the City's Housing Trust Fund to support the activities of the Homelessness Response Division.

In instances where the City is not the bond issuer for a development, the City's policy normally requires the issuer to assume full responsibility for issuance and ongoing compliance of the bond issue with federal and state tax laws. But as discussed below, the City requested, and CMFA

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agreed, that the City may monitor the affordability requirements and health and safety regulations of the Modera development. The City will hold the TEFRA public hearing for the CMFA issuance.

TEFRA Public Hearing Requirements

Pursuant to Section 147(f) of the Internal Revenue Code of 1986, the issuance of the bonds by CMFA requires the City's approval when 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 in order 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 CMFA's 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 Council is an applicable elected representative with respect to the bond issue. The City Council's approval of the recommended action items is not approval of the Modera development for any other purpose.

The TEFRA public hearing will be held as part of the action items on the November 14, 2023 City Council meeting agenda and serves as a method of notifying members of the public about CMFA's intent to approve and issue tax-exempt private activity bonds for the Modera development. A public hearing notice will be published in the *San José Post-Record* on or before November 6, 2023, announcing the time and location of the TEFRA 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 that may subsequently receive funding from the sale of private activity tax-exempt bonds. A public hearing will also provide interested individuals the opportunity to provide testimony on any matters related to such potential bond issues, including the nature and location of the Modera development.

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Proposed City Requirements for Inclusion in the Bond Regulatory Agreement

This is the first time the City has been asked to authorize CMFA to issue 501(c)(3) bonds. Those bonds are not subject to state regulation and have no regulatory limits on leveraging or fees, nor any state agency affordability requirement monitoring requirement.

Thus, due to the lack of a familiar third-party regulatory framework for these bonds, such as the California Debt Limit Allocation Committee monitoring the project, staff requests a larger monitoring role than is common on conventional bond issuances by CMFA. This is intended to help address any long-term affordability and viability concerns and provides an opportunity to collaborate with CMFA and the Developer on the bond regulatory agreement. The City and the Developer have agreed that the City will be named as an administrator and a party to the agreement. This would provide the City with monitoring rights to ensure that the Modera development maintains affordability for a term of 75 years and that the development will be well maintained and safe. As consideration for the City monitoring the Modera development, the Developer consented to the collection of annual monitoring fees of \$97.21 per unit escalating at 3%. Monitoring of the Modera development will begin upon the closing of the acquisition and will include building inspections conducted by Housing Department staff, ongoing compliance monitoring, and annual fair housing reviews.

EVALUATION AND FOLLOW-UP

This memorandum presents the set of recommendations related to the City Council's approval of an exception to the City's 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.

The Housing Department posts periodic reports on the status of affordable properties undergoing rehabilitation or construction on its website, www.sjhousing.org. If the recommended actions are approved, the progress of the Modera 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 and an ongoing monitoring fee of \$97.21 per unit escalating by 3% annually. The recommendation will also result in the City forgoing bond administration fees for this transaction. CMFA will contribute \$23,600 of its issuance fee to the City to be deposited into the Housing Trust Fund. The Bond Policy outlines the parameters for the administrative fees,

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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 75-year term of the regulatory period. Based on these parameters and a total issuance of \$100,000,000 for the Modera development, the City will forgo approximately \$275,000 in issuance fees and \$125,000 annually. These fees would be collected only if the City issued the bond.

Table 2: Estimate Foregone Fee Amounts

Development	Estimated Bond Amount	Issuance Fee	Annual Monitoring Fee
Modera The Alameda	\$100,000,000	\$275,000	\$125,000

COORDINATION

Preparation of this report 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 November 14, 2023 City Council meeting.

The TEFRA public hearing to be held as part of the action items on the November 14, 2023 City Council meeting agenda is a method of notifying members of the public about CMFA's intent to issue tax-exempt private activity bonds for the Modera development. A public hearing notice will be published on or before November 6, 2023 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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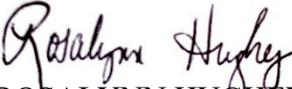
CEQA

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/
RICK BRUNEAU
Director of Finance


ROSALYNN HUGHEY
Deputy City Manager and
Acting Housing Director

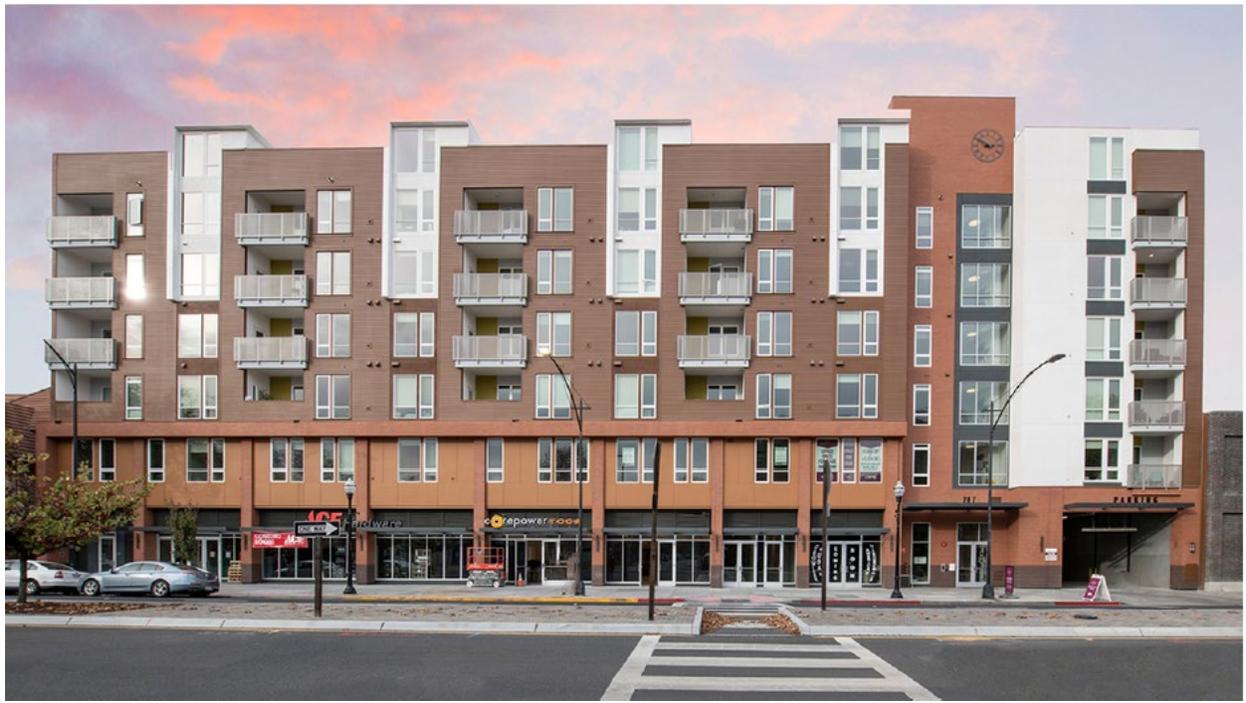
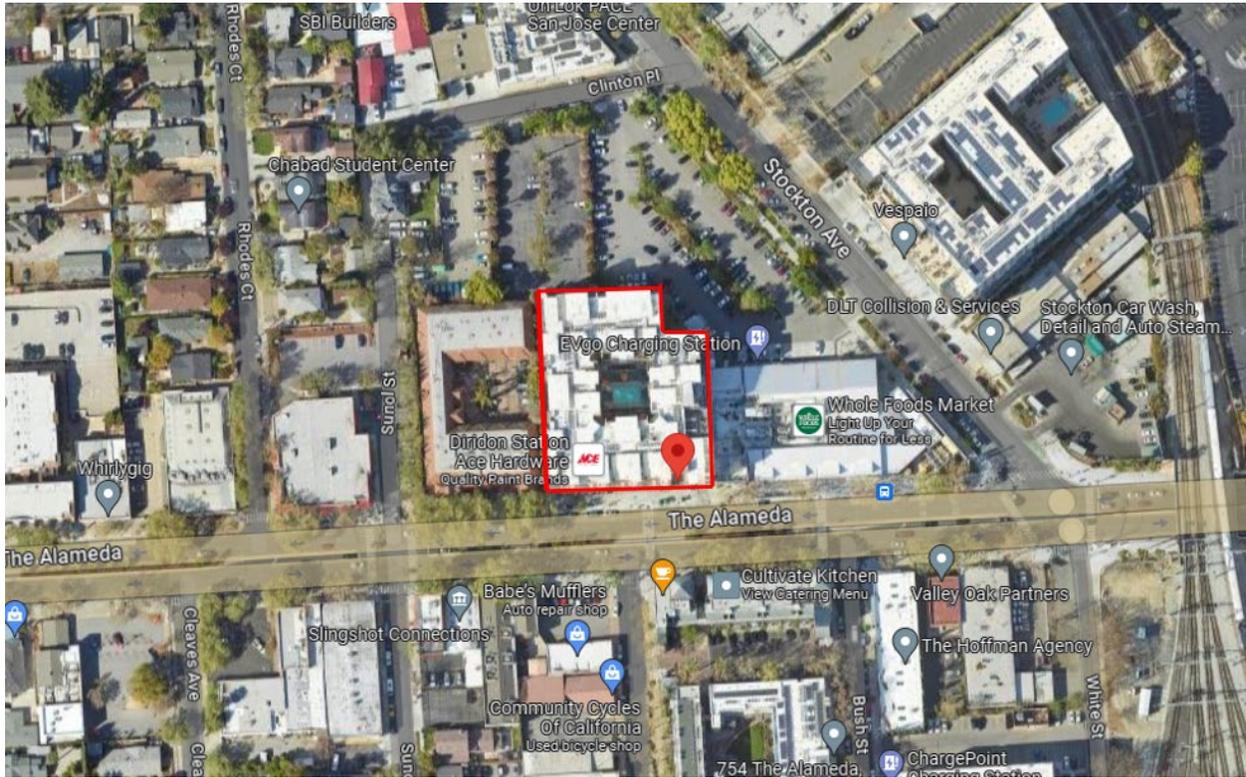
The principal author of this memorandum is Shelsy Bass, Senior Development Officer. For questions, please contact Qianyu Sun, Deputy Director, Debt and Treasury Management, at qianyu.sun@sanjoseca.gov or Ragan Henninger, Deputy Director, Housing Department, at ragan.henninger@sanjoseca.gov.

ATTACHMENTS:

Attachment A: Site Map

Attachment B: Acquisition Timeline

ATTACHMENT A
SITE MAP
787 The Alameda



ATTACHMENT B: ACQUISITION TIMELINE
787 The Alameda

Task	Date
Execute Purchase and Sale Agreement	October 6, 2023
Remove Contingencies on Purchase	November 6, 2023
TEFRA Hearing	November 14, 2023
Close of Escrow	November 29 - January 5, 2024