



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Julia H. Cooper

SUBJECT: SEE BELOW

DATE: March 5, 2018

Approved

D. D. Syl

Date

3/13/18

**SUBJECT: REAFFIRMING EXISTING BOND ISSUANCE AND APPROVING POST-
ISSUANCE COMPLIANCE POLICIES FOR MULTIFAMILY HOUSING
REVENUE BONDS**

RECOMMENDATION

Adopt a resolution:

1. Reaffirming the previously adopted Council Policy Number 1-16 entitled: "Issuance of Multifamily Housing Revenue Bonds";
2. Approve Post-Issuance Compliance Policies for Tax Exempt Multifamily Bonds in order to comply with the California Debt Limit Allocation Committee ("CDLAC") Regulation 5031 (c) and authorizing the Directors of Housing and Finance to submit updates to the Guidelines to CDLAC without additional Council action; and
3. Authorizing the Director of Housing and Director of Finance, or respective designees, to take any and all necessary actions to execute, amend (including administrative procedures as needed from time to time), and deliver all documents relating to the issuance, reporting, and compliance monitoring of new and existing Multifamily Housing Revenue Bonds issued by the City of San José, to remain in compliance with CDLAC or other appropriate regulatory agencies.

OUTCOME

Approval of the recommended actions will ensure the City's compliance with CDLAC Regulation 5031(c) so that the City may continue to be a conduit issuer of tax-exempt multifamily housing revenue bonds.

BACKGROUND

Since 1987, the City of San José has issued Multifamily Revenue Bonds (“Bonds”) to facilitate the development, rehabilitation, and preservation of affordable housing. Since that time, the City has issued approximately \$1.2 billion in Bonds, which have financed the construction or preservation of more than 8,000 affordable units.

Federal law limits how much tax-exempt debt a state can issue in a calendar year for private projects that have a qualified public benefit, including bonds to finance affordable housing projects. A population-based formula determines this cap. CDLAC was created to set and allocate California’s annual debt ceiling, and administer the State’s tax-exempt bond program to issue the debt. CDLAC’s mission is to ensure its bond allocation is fully and efficiently used to finance projects and programs while providing maximum public benefit and contributing to the economic vitality of California.

On February 8, 2017 CDLAC issued a memo “CDLAC Memo” advising all issuers of bonds that finance qualified projects to submit to CDLAC for each State Ceiling Pool from which an allocation is requested, policies setting forth bond issuance procedures and post-issuance compliance procedures pursuant to Section 5031 (c) of its regulations (Division 9.5 of Title 4 of the California Code of Regulations) (adopted December 15, 2016). In January 2018, the City Housing staff received instructions from CDLAC requiring that in order for the City to be in compliance with Section 5031(c), the City Council would need to re-affirm the City’s existing bond policies and procedures, via a signed resolution, in order to date refresh our documents, and to conform to CDLAC policy which requires re-approval every ten (10) years of Bond Issuer Policies and Post Issuance policies.

To comply with Section 5031(c) which states for Qualified Residential Rental Projects (“QRRPs”) applicant/issuer must also have policies reviewed by bond counsel having expertise with the federal and state laws pertaining to the issuance or conversion and post-closing compliance of private activity conduit bonds for consistency with applicable federal and state laws. The bond counsel law firm, Jones Hall has reviewed the Bond Issuance and Post-Issuance Compliance policies for consistency with applicable federal and state laws and regulations.

Further description of the Post Issuance Compliance Policies and Procedures that address CDLAC regulations Section 5031 (c) are described below under the heading “Post Issuance Compliance Policies”. These actions must occur prior to the City’s next issuance of Multifamily Housing Revenue Bonds.

ANALYSIS

In order for the City to be in compliance with Regulation 5031 (c), it is recommended that the City Council adopt a resolution to:

1. **Reaffirming the City Council Policy 1-16 entitled: “Policy for the Issuance of Multifamily Housing Revenue Bonds”** –adopted December 6, 2005. This Policy describes primary issuance practices of the City specifically as they relate to Qualified Residential Rental Projects (“QRRP”s), as defined by CDLAC. A few technical corrections have been noted in the attached document. Administration of this Policy is the responsibility of the City’s Finance and Housing Departments. (Attachment 1).
2. **Approve the “Post Issuance Compliance Policies” described below.**

In addition to the adopted Bond Issuance Policy and Procedures, the City has also established the following practices for ensuring Post Issuance Compliance with CDLAC’s QRRP requirements:

- I. Exhibit A of the CDLAC Resolution describes the project commitments on which CDLAC bases its bond allocation decisions. In addition to specific supporting documentation, Exhibit A establishes the conditions to which the City’s post issuance monitoring and compliance efforts are directed.

Consistent with Section 5220 (c) of the CDLAC regulations, the City has since January 1, 2017 included the CDLAC Resolution including Exhibit A, in its Bond Regulatory Agreements. This includes the adopted Resolution Number and date on which the CDLAC Committee transferred an allocation of State Ceiling for Qualified Private Activity Bonds (a multifamily revenue bond) to the City of San Jose for the named Project, this inclusion of the Resolution in the Bond Regulatory Agreement ensures that the Project Sponsor (developer) understands and agrees to its Post Issuance obligations. For projects receiving allocations prior to 2017, the City confirms compliance with the CDLAC Resolution and the CDLAC Exhibit A Conditions through additional documents and certifications.

- II. The City reports the compliance of QRRP projects to CDLAC prior to March 1 of each year using CDLAC’s online reporting system. This involves completion of CDLAC’s online form entitled “Annual Applicant Public Benefits and Ongoing Compliance Self-Certification.” To support the completion of this certification to CDLAC, the City of San Jose Housing Department, Asset Management division, follows administrative procedures to collect the following documents from the borrower/project sponsor:

- a. Certification of Delivery of Public Benefits – This form parallels the CDLAC Issuer Certification of Public Benefits but requires that the borrower/project sponsor certify those CDLAC Conditions contained in Exhibit A of the CDLAC Resolution.

- b. Certification of Compliance I – For projects completed prior to January 1, 2017.
 - c. Certification of Compliance II – For projects completed after December 31, 2016.
 - d. Certificate of Completion - For projects completed after December 31, 2016, to be collected in the year in which the project completes construction.
 - e. The most current IRS Form 8703.
 - f. A Certificate of Continuing Program Compliance using the City's most current version of the form.
 - g. A City rent roll dated no earlier than June 30th of the prior year to ensure the project is in compliance with rent and income requirements.
- III. To the extent that the form of CDLAC reporting of Post Issuance Compliance changes or the form of documents needed to document this compliance, City staff will adapt its Post Issuance Compliance Policy accordingly.
- IV. Each January, the City reminds bond financed project sponsors of the documents required for City compliance certification with CDLAC requirements and conditions.
- V. Upon review and approval of the submitted documents, the City completes the online Annual Applicant Public Benefits and Ongoing Compliance Self-Certification for each property for which the City issued bonds and on which the project's Bond Regulatory Agreement is still in effect.
- VI. Upon completion of the City's certification for each property in CDLAC's online system, the online submission is combined with supporting documents received in accordance with Section 3 above and scanned into a single PDF document for each project. This electronic document is saved in the Housing Department's Bond Administration folder for at least 3 years after the term of the Bond Regulatory Agreement.

The above recommended actions represent affirmation and approval of practices and policies already in place and in use by the City's Housing and Finance Departments. City Council affirmation and approval is needed to meet the requirements of Section 5031(c) of the CDLAC Regulations. For purposes of complying with Section 5031(c), the date of the proposed resolution reaffirming the City Council Policy 1-16 and approving Post Issuance Compliance Policies will be their new effective date.

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Future Modifications to the City's Multifamily Revenue Bond Policy

The actions in this memorandum are being recommended to immediately comply with CDLAC requirements by reaffirming the City's existing Policy for the Issuance of Housing Revenue Bonds ("Multifamily Revenue Bond Policy"). The Housing Department will be initiating a comprehensive outreach process to solicit input from developers and other stakeholders regarding how the City's Policy may be improved. The Housing Department expects to begin this process in coordination with the Finance Department in FY 2018-19 and will present recommendations to the City Council upon conclusion of the outreach process.

EVALUATION AND FOLLOW-UP

The Housing and Finance Departments produce a quarterly Information Memorandum regarding the status of all multifamily affordable housing transactions. This document includes projects that have issued bonds in accordance with the City's Multifamily Revenue Bond Policy.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council agenda for March 20, 2018.

COORDINATION

Preparation of this report was coordinated with the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

This item was not heard by the Housing and Community Development Commission, as affordable development financing and compliance processes do not fall under the functions, powers, and duties of the Commission delineated in Section 2.08.2840 of the San José Municipal Code.

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CEQA

Not a Project, File No. PP17-004, Government Funding Mechanism or Fiscal Activity with no commitment to a specific project which may result in a potentially significant physical impact on the environment.

/s/
JULIA H. COOPER
Director, Finance Department

/s/
JACKY MORALES-FERRAND
Director, Housing Department

For questions, please contact Patrick Heisinger, Division Manager, at (408) 975-2647.

Attachment 1 - Policy for the Issuance of Multifamily Housing Revenue Bonds

ATTACHMENT 1

CITY OF SAN JOSE, CALIFORNIA

CITY COUNCIL POLICY

Title POLICY FOR THE ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS	Page 1 of 11	Policy Number 1-16
	Effective Date 06/11/02	Revised Date 12/06/05

Approved By Council Action

June 11, 2002, Item 3.7, Resolution No. 71023

GENERAL MATTERS

I. ISSUER

The City of San Jose (the "City") shall be the issuer of all bonds financing multifamily housing rental projects (a "Project" or "Projects") within the City, except as provided below. The City's Housing Department and Finance Department will consider other issuing agencies as follows:

A. The Redevelopment Agency

~~The Redevelopment Agency may issue bonds for any Project located within a redevelopment project area. 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, 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, 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

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, underwriter (if applicable) and 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 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. Resolution

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

1. Memorialize the Council's intent to issue the debt in order to induce others to provide project financing;
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 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 Jose 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 Jose 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, 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 issue. 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 issue 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 issue, 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, 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 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 to Council

Promptly after the issuance of all bonds for a CDLAC round, the City Finance Department shall 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 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. 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 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 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 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 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.