

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
UNCLERKED

2005 SEP -1 PM 12: 05

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: September 13, 2005

RE: RESOLUTIONS AUTHORIZING THE CITY AND THE REDEVELOPMENT AGENCY TO APPLY FOR AN ALLOCATION OF NEW MARKET TAX CREDITS AS STRONG AFFILIATES OF OAKLAND RENAISSANCE NMTC, INC.

SUMMARY

The NMTC program provides a Federal income tax credit equal to 39%, over a seven-year period, of the amount that investors invest in a certified Community Development Entity ("CDE"). The CDE must in turn invest substantially all of those funds into economic development projects in low-income communities. A request for CDE certification of Oakland Renaissance NMTC, Inc. was submitted to the Treasury Department August 22, 2005, which in turn allows this organization to apply for the 2006 round of NMTCs by the September 21, 2005 application deadline. The Oakland Renaissance board of directors passed a resolution authorizing the organization to apply for an allocation of NMTCs for the 2006 round.

This report requests the Oakland City Council and the Redevelopment Agency approve resolutions authorizing the City Administrator and the Agency Administrator to apply to the U.S. Department of the Treasury for an allocation of New Markets Tax Credits ("NMTCs") for economic development projects in Oakland as "strong affiliates" of Oakland Renaissance NMTC, Inc., a nonprofit corporation affiliated with the City. It is anticipated that Oakland Renaissance will apply for an allocation of NMTCs in the current round in the maximum amount of \$150 million.

FISCAL IMPACT

There is no fiscal impact to the Agency or the City associated with approval of these resolutions. Staff is planning that costs of approximately \$100,000 per each individual transaction for outside legal counsel will be recouped from NMTC investors when each transaction closes. Projects funded with NMTCs will be expected to generate jobs and major economic activity in Oakland's low income areas, boosting various tax revenues for the Redevelopment Agency and the City of Oakland and stimulating further development activity.

BACKGROUND

When applying for NMTC allocations, it is important for newly-certified CDEs that do not have a track record of successful economic development to partner with an established public or private entity that has such a track record and demonstrated managerial capacity. According to NMTC program definition, an affiliate is any legal entity that controls, is controlled by, or is under common control with the applicant CDE. Control is further defined by the Treasury to include i) control in any manner over the election of a majority of CDE directors, and ii) the

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power to exercise, directly or indirectly, a controlling influence over the management policies or investment decisions of the CDE. Under these definitions, the City and the Agency would qualify as strong affiliates of Oakland Renaissance, as the City and Agency would control appointment of directors and CDE financial activities would require City Council approval. The five directors of Oakland Renaissance currently consist of designated managerial staff in the Community and Economic Development Agency, Office of the Treasury, and City Administrator's Office.

In 2004, Oakland Renaissance applied for the third round of tax credit allocations but was not considered a certified CDE due to a discrepancy in composition of its board members, and therefore was ineligible to receive NMTCs. This discrepancy has been corrected and the CDE certification application has been resubmitted.

In mid July 2005, the Treasury Department announced the opening of the fourth round of competition for the allocation of \$3.5 billion in NMTCs. Created by Congress in December 2000, the NMTC program permits individual and corporate taxpayers to receive a credit against Federal income taxes for making Qualified Equity Investments (QEIs) into investment vehicles known as Community Development Entities (CDEs). Substantially all of the investment must in turn be used by CDEs to make qualified investments in low-income communities. Low-income communities are defined as any census tract with 1) a poverty rate of at least 20%, i.e. 20% or more of the households in the census tract are at or below the poverty rate for that statistical area; or 2) a median family income that does not exceed 80% of statewide or metropolitan area median income, whichever is greater. Based upon this definition, a majority of the flatland areas of Oakland and nearly all of its redevelopment areas qualify as low-income communities and would be eligible for NMTC investments.

The NMTC credit totals 39% of the cost of the investment and is claimed over a seven-year credit allowance period. A 5% credit is allowed for each of the first three years of the period and a 6% credit for each of the last four years. In essence, the NMTC program allows NMTC investors to forego the direct return of all or a substantial portion of their investment because they will receive tax credits that more than offset the amount of investment given up. This offset occurs because NMTC investors are allowed to, in effect, leverage their investments to obtain tax credits that exceed their actual dollar investment. Oakland Renaissance will have five years to use its NMTC allocation after entering into an allocation agreement with the Treasury.

Subsidiary CDEs created by Oakland Renaissance to invest in individual projects will have one year after receiving capital from investors to make the intended qualified investment. NMTCs can be used to fund a variety of commercial or industrial development projects. Projects ineligible for NMTC investment include 1) residential rental projects wherein 80% or more of income is derived from residential units, 2) projects where no substantial improvements are made, and 3) ineligible businesses such as golf courses, race tracks, gambling facilities, and stores where the principal business is the sale of alcoholic beverages. NMTCs could be used for

non-residential portions of transit village developments to help off-set high capital investment requirements, or other large projects in need of assistance.

Sample Transaction

A simple example would be an NMTC investor putting \$3 million into a limited partnership, ABC Partners, specifically established to invest in a subsidiary CDE of Oakland Renaissance. This subsidiary CDE, Oakland Renaissance II would be specifically created to lend to XYZ Mfg, for construction of a new manufacturing facility in a low-income area of Oakland. ABC Partners also borrows \$7.5 million from a local bank repayable interest-only over a seven-year period. ABC Partners now has \$10 million to invest in Oakland Renaissance II after deduction of \$500,000 for a "load" to pay the legal, accounting and other transaction fees. Oakland Renaissance II then loans \$10 million to XYZ Mfg for construction of its new facility. XYZ Mfg makes interest-only payments to Oakland Renaissance II on its \$10 million loan sufficient to pay the interest only on the \$7.5 million underlying loan ABC Partners borrowed from the local bank. At the end of the seven-year term, XYZ Mfg refinances \$7.5 million of its \$10 million loan from Oakland Renaissance II and \$2.5 million is forgiven since Oakland Renaissance II does not have to return \$3 million of the \$10.5 million equity investment made by ABC Partners. This is because the equity investors of ABC Partners will have received over a 100% "return" of their \$3 million investment in the form of \$3.9 million of tax credits claimed over the previous seven years. The \$3.9 million in tax credits are calculated on the entire \$10 million net investment by ABC Partners into Oakland Renaissance II, not just the \$3 million the NMTC investors invested into ABC. In this way the NMTC investors are able to leverage tax credits well in excess of their actual cash investment. The end result is that \$3 million of equity has been infused into an important economic development project that would otherwise not be available thereby making the project financially feasible. Such an arrangement reduces the reliance on local City and Agency subsidies, or can be combined with local subsidies when such subsidies alone are insufficient to make projects feasible.

Neither the City nor the Agency will be required to invest any funds into Oakland Renaissance, aside from minor staff costs. Individual and corporate investors would supply all of the capital similar to other tax credit programs. There would be an upfront deposit by ORA for the estimated \$100,000 cost per transaction for specialized outside legal counsel to prepare the complex documentation necessary to set up each NMTC transaction. That cost is expected to be passed along to the NMTC investors. It is important to note that, under the Oakland Renaissance by-laws, City Council approval will be required prior to any allocation of NMTCs to specific economic development projects.

KEY ISSUES AND IMPACTS

Proposed Allocation Strategy

In its application for a NMTC allocation, Oakland Renaissance must indicate what percentage of

the NMTC allocation received will be directed to real estate development versus non-real estate projects. Staff is recommending that 80% of Oakland Renaissance's allocation be directed to real estate and 20% to non-real estate projects. In addition to real estate transactions, Oakland Renaissance would consider projects related to retail, industrial, office space, mix-used, and community facilities. An example of a non-real estate project would be a manufacturer's business purchase of major equipment to support expansion of its operations. This allocation represents a best guess of the distribution among future projects yet to be identified.

City Council and Agency Oversight

Prior to any allocation of NMTCs to a specific project, City Council approval must be received for the amount and terms of the NMTC investment by Oakland Renaissance or subsidiaries in the project. If the application is successful, then a management plan for the tax credits will be brought back to the City Council.

SUSTAINABLE OPPORTUNITIES

Economic

There are indirect sustainable economic opportunities that apply to this particular action through implementation of this financing tool on a project-by-project basis. A successful application for NMTCs would provide a tool to strongly enhance the City and Agency's ability to develop key commercial and industrial projects. These projects are expected to attract significant capital investment, create jobs and stimulate further economic activity in Oakland.

Environmental

In pursuance of Ordinance 12658, private development projects in the City of Oakland are strongly encouraged to take advantage of free services provided by the Oakland Energy Partnership's Energy Efficiency Design Assistance Program and PG & E's Savings by Design Program for the purposes of integrating strong energy efficiency attributes into their projects. Projects funded with NMTCs will be encouraged to incorporate as many "environmental sustainability" features into their design and construction as are practical and financially feasible.

Social Equity

There are expected to be indirect social equity opportunities related to the proposed City Council action in the form of new projects that will bring increased economic activity, job creation, and improved goods and services to Oakland's low-income communities.

DISABILITY AND SENIOR CITIZEN ACCESS

Projects developed with NMTCs will comply with all applicable local, state and federal regulations including those pertaining to disabled and senior citizen access.

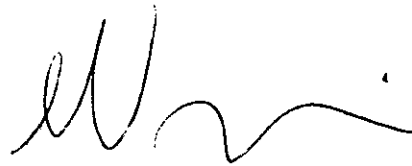
RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council and the Agency adopt the attached resolutions authorizing the City and the Agency to apply for an allocation of NMTCs as strong affiliates of Oakland Renaissance NMTC, Inc. for 2006 and future rounds of allocation. Staff believes that City and Agency association with Oakland Renaissance's application would significantly strengthen such application and increase the likelihood of receiving an allocation. Oakland Renaissance's receipt of a NMTC allocation would provide a powerful financing tool that could be used to jump start a number of key economic development projects throughout low income communities in the City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council and Redevelopment Agency approve the attached resolutions.

Respectfully submitted,



Daniel Vanderpriem
Director Redevelopment, Economic
Development and Housing and Community
Development

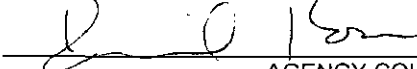
Prepared by:
Gregory D. Hunter
Redevelopment Area Manager

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE]:


OFFICE OF THE CITY ADMINISTRATOR

FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY:


AGENCY COUNSEL

2005 SEP -1 PM 12: 05

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION NO. _____ C.M.S.

**A RESOLUTION AUTHORIZING THE REDEVELOPMENT AGENCY TO
APPLY FOR AN ALLOCATION OF NEW MARKET TAX CREDITS AS A
STRONG AFFILIATE OF OAKLAND RENAISSANCE NMTC, INC.**

WHEREAS, the New Market Tax Credit ("NMTC") program was created by Congress in 2000 to encourage investment in economic development projects in low income communities; and

WHEREAS, Oakland Renaissance NMTC, Inc., is a California nonprofit public benefit corporation and an affiliate of the Redevelopment Agency and the City of Oakland; and

WHEREAS, Oakland Renaissance NMTC, Inc., was created to encourage investment in low-income communities in Oakland for purposes of the NMTC program; and

WHEREAS, Oakland Renaissance NMTC, Inc., will be applying for an allocation of New Market Tax Credits from the Department of the Treasury in the 2006 NMTC round; and

WHEREAS, a central mission of the Redevelopment Agency is to encourage and support economic development and job creation in redevelopment project areas; and

WHEREAS, most of the redevelopment project areas in Oakland are located in low-income communities as defined under the NMTC program, and so will benefit from investments made by Community Development Entities under the NMTC program that will result in redevelopment of those project areas; now, therefore, be it

RESOLVED: That the Agency hereby authorizes the Redevelopment Agency to apply for an allocation of New Market Tax Credits in the 2006 NMTC round and future rounds as a strong affiliate of Oakland Renaissance NMTC, Inc.; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator or her designee to prepare and file such application for New Market Tax Credits, and to take whatever other action is necessary and appropriate with respect to the NMTC program and the application consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID,
 AND CHAIRPERSON DE LA FUENTE

NOES-

ABSENT-


ABSTENTION-

ATTEST: _____
 LATONDA SIMMONS
 Agency Secretary

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 SEP -1 PM 12: 05

APPROVED AS TO FORM AND LEGALITY:



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

A RESOLUTION AUTHORIZING THE CITY OF OAKLAND TO APPLY FOR AN ALLOCATION OF NEW MARKET TAX CREDITS AS A STRONG AFFILIATE OF OAKLAND RENAISSANCE NMTC, INC.

WHEREAS, the New Market Tax Credit ("NMTC") program was created by Congress in 2000 to encourage investment in economic development projects in low income communities; and

WHEREAS, Oakland Renaissance NMTC, Inc., is a California nonprofit public benefit corporation and an affiliate of the City of Oakland and the Redevelopment Agency; and

WHEREAS, Oakland Renaissance NMTC, Inc., was created to encourage investment in low-income communities in Oakland for purposes of the NMTC program; and

WHEREAS, Oakland Renaissance NMTC, Inc., will be applying for an allocation of New Market Tax Credits from the Department of the Treasury in the 2006 NMTC round; and

WHEREAS, a central mission of the City of Oakland is to support economic development and job creation in its low-income communities; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City of Oakland to apply for an allocation of New Market Tax Credits in the 2006 NMTC round and future rounds as a strong affiliate of Oakland Renaissance NMTC, Inc.; and be it further

RESOLVED: That the City Council hereby authorizes the City Administrator or her designee to prepare and file such application for New Market Tax Credits, and to take whatever other action is necessary and appropriate with respect to the NMTC program and the application consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the
Council of the City of Oakland, California