

CITY OF OAKLAND

AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

04 SEP -1 PM 1:49

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Finance and Management Agency
DATE: September 14, 2004

RE: **A RESOLUTION DECLARING THE OFFICIAL INTENT OF THE CITY OF OAKLAND REGARDING CERTAIN CAPITAL EXPENDITURES FOR UPTOWN PARTNERS, LLC TO FINANCE THE CONSTRUCTION OF RENTAL HOUSING IN THE CITY OF OAKLAND, IN AN AMOUNT NOT TO EXCEED \$160,000,000, TO BE REIMBURSED FROM THE PROCEEDS OF A TAX-EXEMPT OBLIGATION**

SUMMARY

On July 26, 2004, the Oakland Redevelopment Agency (the "Agency"), pursuant to Resolution 2004-38 C.M.S., authorized the execution of a lease disposition and development agreement (the "LDDA"), a ground lease (the "Ground Lease"), and related documents among the Agency, the City of Oakland and Uptown Partners, LLC, a California Limited Liability Company ("Uptown Partners"), for the development of a mixed-use rental housing and retail development project (the "Uptown Project") in the area generally bounded by Thomas L. Berkley Way (formerly 20th Street) on the north, Telegraph Avenue on the east, 19th Street on the south and San Pablo Avenue on the west (collectively referred to as the "Project Area").

The LDDA requires the City to assist Uptown Partners in its efforts to secure tax-exempt bond financing for the construction of the Uptown Project. The mechanism of choice for this financing is a tax-exempt multi-family housing revenue bond. In order to proceed with this financing, Uptown Partners has requested that the City hold the required public hearing and adopt an Inducement (Reimbursement) Resolution in order for the City to proceed with an application to the California Debt Limit Allocation Committee (CDLAC) for financing of the first phase of the Uptown Project in an amount not to exceed \$160 million. Holding the public hearing and adopting the Inducement Resolution does not obligate the City to issue any bonds, but rather starts the process that will allow Uptown Partners and the City to submit an application for tax-exempt multi-family housing revenue bond financing, which is due to CDLAC on October 1, 2004.

FISCAL IMPACTS

The first phase of the Uptown Project will be financed with tax-exempt bond proceeds, which will be the sole obligation of Uptown Partners. As this is a non-recourse conduit financing, the City will not be liable for the debt or its related costs. In addition, the City will require Uptown Partners to indemnify it from any liability that may result from Uptown Partners' failure to meet its obligations under the terms of the bond transaction. The debt and its related annual cost will be the sole responsibility of Uptown Partners.

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~~DISCUSSION~~
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Approval of an Inducement Resolution Regarding Construction of Rental Housing

Adoption of this Inducement Resolution will not have a fiscal impact on the City. If the City receives an allocation of authority from CDLAC to issue bonds in the amount of \$160 million, it will be entitled to an issuance fee, an annual administration fee and reimbursement of all other costs incurred in relation to the issuance.

BACKGROUND

On July 26, 2004, the Agency, pursuant to Resolution 2004-38 C.M.S., authorized the execution of an LDDA, a Ground Lease, and related documents among the Agency, the City of Oakland and Uptown Partners for the development of the Uptown Project in the Project Area. Uptown Partners' development proposal for the Project Area includes the following highlights:

- A transit-oriented development of 700 rental apartments in the area bounded by 19th Street, Thomas L. Berkley Way, Telegraph Avenue and San Pablo Avenue,
- 20 percent (140 units) of the 700 units will be affordable to households earning 50% or less of the area's median income (AMI) for a period of 55 years;
- Five percent (35 units) of the 700 units will be affordable to households earning incomes not exceeding 120 percent of AMI for a period of 55 years;
- 14,500 square feet of neighborhood-serving retail along Telegraph Avenue;
- A 25,000 square foot public park that borders on Thomas L. Berkley Way;
- The site plan combines a mix of housing types in a non-gated community setting that include low- and high-rise apartments, as well as live/work units;
- Construction of the first phase of the project with 590 units located in the 2 blocks between 19th Street and Thomas L. Berkley Way along San Pablo Avenue is projected to commence in the summer of 2005. The second phase, consisting of 110 units located in the 2 blocks between 19th Street and Thomas L. Berkley Way along Telegraph Avenue will start in the fall of 2007. Project completion is anticipated by the beginning of 2010.

KEY ISSUES AND IMPACTS

In order to permit the City and Uptown Partners to prepare and submit an application to CDLAC for tax-exempt financing, the City must first adopt an Inducement Resolution. Pursuant to Section 147(f) of the Internal Revenue Code of 1986, prior to their issuance, tax-exempt housing revenue bonds are required to be approved by the "applicable elected representative" of the governmental unit on whose behalf such bonds are to be issued and by a governmental unit having jurisdiction over the entire area in which any facility financed by such bonds is to be located, after a public hearing held following reasonable public notice. This "inducement" is a conditional expression of intent on the part of the legislative body of the public agency to be prospectively issuing tax-exempt bonds. In this case, the City Council is the legislative body with respect to the tax-exempt bonds whose proceeds would be used to pay for the development of the first phase of the Uptown Project.

If CDLAC approves a bond allocation in the requested amount, the City will serve as the conduit for financing the bonds, but the obligation for payment of the bonds will be the sole

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responsibility of Uptown Partners, using revenue from the Project to make all debt service payments. In the event of a default by Uptown Partners, the City will not have any financial liability.

Upon CDLAC approval, staff expects to return in the spring of 2005 for City consideration of a proposed resolution authorizing the sale and issuance of bonds. At that time, staff will be providing a comprehensive update on the Uptown Project, including the anticipated schedule for implementation and information on the actual amount and timing of the bond issue to finance the Uptown Project. While this Inducement Resolution calls for bonds in an amount not to exceed \$160 million, the actual amount may be less, depending on final construction cost estimates and other Project-related considerations.

SUSTAINABLE OPPORTUNITIES

Economic: The approval of the attached resolution will result in a positive economic impact by promoting a redevelopment infill project that will take blighted, underutilized and contaminated sites and turn them into an economically productive use by building a large-scale housing project that includes a retail component. The development of the Project should attract over 2,000 new residents to downtown Oakland, which will contribute to the revitalization of vacant retail sites and stimulate job creation through increased demand for local services and shopping opportunities.

Environmental: By developing in already built-up areas, the Project has a large-scale effect of reducing the pressure to construct on agricultural and other undeveloped land, and thereby contributes to the prevention of urban sprawl.

The location of the Uptown Project in proximity to major public transportation nodes will likely encourage project residents and retail customers to use BART and AC Transit. Moreover, Uptown Partners and City staff have established a list of sustainability measures that will be incorporated into the project.

Social Equity: The Project will expand the supply of affordable housing in Oakland by including 140 rental units that will be affordable to households earning 50 percent or less of the area's median income. Uptown Partners will comply with the City's contracting programs, including the Small/Local Business Construction Program, the Small/Local Business Professional Services Program (L/SLBE) and the Local Employment Program. All of the workers performing construction work for City funded projects must be paid prevailing wage rates. Uptown Partners will also be subject to the Living Wage Ordinance.

DISABILITY AND SENIOR CITIZEN ACCESS

Uptown Partners' project design must comply with the requirements of the Americans with Disabilities Act.

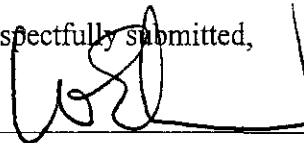
RECOMMENDATIONS AND RATIONALE

Staff recommends that the City approve the Inducement Resolution declaring the official intent of the City regarding certain capital expenditures for Uptown Partners to finance the construction of rental housing in the City of Oakland, in an amount not to exceed \$160,000,000, to be provided by the proceeds of a tax-exempt obligation.

ACTION REQUESTED OF THE CITY COUNCIL

It is requested that the City Council approve the Inducement Resolution declaring the official intent of the City regarding certain capital expenditures for Uptown Partners to finance the construction of rental housing in the City of Oakland, in an amount not to exceed \$160,000,000, to be provided by the proceeds of a tax-exempt obligation.

Respectfully submitted,



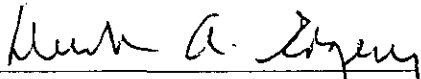
WILLIAM E. NOLAND

Director, Finance and Management Agency

Prepared by:

Joseph T. Yew, Jr.
Treasury Manager

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

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NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Tuesday, September 21, 2004, a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986 will be held with respect to the proposed issuance of one or more series of multifamily housing revenue bonds (the "Bonds") by the City of Oakland in an aggregate principal amount not to exceed \$160,000,000. The proceeds of the Bonds will be issued to, among other things, to provide a loan to Forest City Residential West, Inc. or its affiliates or subsidiaries thereof, including Uptown Partners, LLC. (collectively, "Forest City") to finance the construction of 590 rental housing units by Forest City. The rental housing units will be located in Oakland, California on properties that are bounded by Thomas L. Berkley Way (formerly 20th Street) on the north, Telegraph Avenue on the east, 19th Street on the south and San Pablo Avenue on the west.

The hearing will commence at 7:00 p.m., local time, or as soon thereafter as the matter can be heard, and will be held in the City Council Chambers, One Frank H. Ogawa Plaza, 3rd Floor, Oakland, California. Interested persons wishing to express their views on the issuance of the Bonds or on the nature and location of the rental housing units to be financed may attend the public hearing or, prior to the time of the hearing, submit written comments.

Additional information concerning the above matter may be obtained from, and written comments should be addressed to, City Clerk of the City of Oakland, One Frank H. Ogawa Plaza, 3rd Floor, Oakland, California, 94612.

Dated: September 3, 2004

[Signature] 8/26/04
OFFICE OF THE CITY ATTORNEY
OAKLAND

CITY OF OAKLAND

04 SEP -1 PM 1:52

RESOLUTION NO. _____ C. M. S.

A RESOLUTION DECLARING THE OFFICIAL INTENT OF THE CITY OF OAKLAND REGARDING CERTAIN CAPITAL EXPENDITURES FOR UPTOWN PARTNERS, LLC TO FINANCE THE CONSTRUCTION OF RENTAL HOUSING IN THE CITY OF OAKLAND, IN AN AMOUNT NOT TO EXCEED \$160,000,000, TO BE REIMBURSED FROM THE PROCEEDS OF A TAX-EXEMPT OBLIGATION

WHEREAS, on July 26, 2004, the Redevelopment Agency of the City of Oakland (the "Agency") adopted Resolution 2004-38 C.M.S. authorizing the execution of a Lease, Development and Disposition Agreement (the "LDDA") among the Agency, the City of Oakland (the "City") and Uptown Partners, LLC (the "Developer"); and

WHEREAS, pursuant to the LDDA, the Developer is required to construct during phase one of the Project (hereinafter defined) 590 rental housing units and closely related facilities to be located on properties bounded by Thomas L. Berkley Way (formerly 20th Street) on the north, Telegraph Avenue on the east, 19th Street on the south and San Pablo Avenue on the west in the City of Oakland, California (the "Project"); and

WHEREAS, the LDDA also requires the City and the Agency to assist the Developer in its efforts to seek funding to pay for the construction of the rental housing units, including the adoption of this Resolution; and

WHEREAS, the Developer has requested that the Agency submit an application to the California Debt Limit Allocation Committee ("CDLAC") for authorization to issue tax-exempt housing revenue bonds in an amount not to exceed \$160,000,000 (the "Bonds"); and

WHEREAS, the Bonds will be "private activity bonds" for purposes of the Internal Revenue Code of 1986 (the "Code") and the Developer, not the City or the Agency, will have the obligation to repay the Bonds; and

WHEREAS, pursuant to Section 147(f) of the Code, prior to their issuance, private activity bonds are required to be approved by the "applicable elected representative" of the governmental unit on whose behalf such bonds are expected to be issued and by a governmental unit having jurisdiction over the entire area in which any facility financed by such bonds is to be located, after a public hearing held following reasonable public notice; and

WHEREAS, the City Council for the City of Oakland (the "City Council") is the "applicable elected representative" for the Agency and the City Council has determined to approve the issuance of the Bonds in order to satisfy the public approval requirement of Section 147(f) of the Code; and

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WHEREAS, the City Council has held a public hearing providing a reasonable opportunity for persons to comment on the issuance of the Bonds and the Project; and

WHEREAS, a notice of public hearing in a newspaper of general circulation in the City has been published, to the effect that a public hearing would be held by this City Council regarding the issuance of the Bonds and the nature and location of the Project; and

WHEREAS, it is intended that this resolution shall constitute the approval of the issuance of the Bonds required by Section 147(f) of the Code and the Agreement;

WHEREAS, it is in the public interest and for the public benefit that the City approve the issuance and delivery of the Bonds for the purpose of financing the construction of the Project; and

WHEREAS, the City intends to finance the costs of the Project, plus related closing costs, with the issuance of tax-exempt obligations; and

WHEREAS, the Code requires an issuer of tax-exempt obligations to declare its intention if the issuer expects to spend its funds on a project and later reimburse itself for those expenditures from the proceeds of tax-exempt obligations; and

WHEREAS, the City reasonably expects to reimburse its expenditures, plus related closing costs, by issuing the Bonds; and

WHEREAS, the maximum principal amount of tax-exempt obligations which the City may issue and use to reimburse itself for the Project, plus related closing costs, is \$160,000,000; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the Guidelines as prescribed by the Secretary for Resources and the provisions of the Statement of Objectives, Criteria and Procedures for Implementation of the California Environmental Quality Act have been satisfied and that in accordance with the California Code of Regulations the actions authorized by this Resolution are categorically exempt from the provisions of CEQA;

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Oakland hereby finds, determines, declares and resolves as follows:

SECTION 1. The Redevelopment Director of the City of Oakland is hereby authorized to submit an application to CDLAC for authorization to the Bonds.

SECTION 2. The issuance of the Bonds is hereby approved for the purposes of Section 147(f) of the Code.

SECTION 3. The City reasonably expects to reimburse its expenditures with proceeds of one or more obligations to be issued by the City or another entity of the City or in which the City is a member or which the members of the City Council act as the governing board or whose debt is subject to the approval of the City Council.

SECTION 4. The maximum principal amount of the obligations expected to be issued for the Projects is \$160,000,000.

SECTION 5. This Resolution is a declaration of official intent to reimburse expenditures pursuant to Treasury Regulations Section 1.150-2.

SECTION 6. This Resolution complies with the California Environmental Quality Act.

SECTION 7. All actions of the officers, agents and employees of the City or other entity of the City that are in conformity with the purposes and intent of this Resolution, whether taken before or after the adoption of this Resolution, are hereby ratified and confirmed.

SECTION 8. This Resolution shall take effect immediately upon its passage.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST : _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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