

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Hugh R. Riley, Assistant City Manager 

DATE: September 26, 2007 (CC Meeting of 10/3/07)

SUBJECT: Consider Resolution Declaring Intention to Reimburse Expenditures from the Proceeds of Tax-Exempt Obligations and Directing Certain Actions

DISCUSSION:

The City Council has received a request from the property owner, Essex Portfolio, L.P., (the "Owner") to have the City issue tax-exempt bonds for the purpose of paying the costs of financing the acquisition and construction of a multifamily housing project (the "Project").

The Project will consist of a 200-unit multifamily housing complex to be located at 150 Casey Road.

By stating its intention to issue bonds for the Project, the City will be taking the initial step in the bond issuance process for the Project. The City may then make an application to the California Debt Limit Allocation Committee for an allocation of private activity bonds for the financing of the Project and a public hearing as required by the Tax Equity Fiscal Responsibility Act (TEFRA). This hearing must be held within 30 days of the filing of the application. If an allocation is received for the Project, the City may then proceed with the preparation of bond financing and legal documents, which would be presented to the Council for consideration at a future meeting.

The attached resolution also provides that a portion of bond proceeds issued for the Project are expected to be used for reimbursement of expenditures for the acquisition and construction of the Project that are paid before the date of the issuance of any such bonds. Federal law requires that the City must declare its intention to reimburse such prior expenditures from tax-exempt bond proceeds. A maximum of \$50,000,000 of bond proceeds may be used for reimbursement of expenditures for the acquisition and construction of the Project that are paid before the issuance date of the bonds.

The Development Agreement with Essex provides that the City will not issue a grading permit for the project and that no TEFRA public hearing shall be scheduled until the Affordable Housing Agreement is executed. If the Affordable Housing Agreement is not executed, the City may also withdraw its CDLAC Application up to one day prior to the CDLAC Allocation meeting (December 4, 2007).

STAFF RECOMMENDATION:

Adopt Resolution No. 2007-_____.

ATTACHMENT: Resolution No. 2007-_____

RESOLUTION NO. 2007- _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA DECLARING INTENTION TO REIMBURSE EXPENDITURES FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS AND DIRECTING CERTAIN ACTIONS

WHEREAS, the City of Moorpark (the "City") intends to issue tax-exempt obligations (the "Obligations") for the purpose, among other things, of making a loan to Essex Portfolio, L.P., a California limited partnership, or a California limited partnership or limited liability company formed by or related to Essex Portfolio, L.P. (the "Owner"), the proceeds of which shall be used by the Owner to finance the acquisition and construction of a 200-unit multifamily housing facility to be located at 150 Casey Road in the City of Moorpark, California and to be commonly known as Essex Moorpark Apartments, LP (the "Project"); and

WHEREAS, the City is authorized by Chapter 7 of Part 5 of Division 31 of the Health and Safety Code of the State of California (the "Law") to issue and sell revenue bonds for the purpose of financing the acquisition and construction of multifamily rental housing facilities to be occupied in part by low and very low income tenants; and

WHEREAS, United States Income Tax Regulations Section 1.150-2 provides generally that proceeds of tax-exempt debt are not deemed to be expended when such proceeds are used for reimbursement of expenditures made prior to the date of issuance of such debt unless certain procedures are followed, among which is a requirement that (with certain exceptions), prior to the payment of any such expenditure, the issuer must declare an intention to reimburse such expenditure (the "Tax Law Reimbursement Provisions"); and

WHEREAS, it is in the public interest and for the public benefit that the City declare its official intent to reimburse the expenditures referenced herein;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City intends to issue the Obligations for the purpose of paying the costs of financing the acquisition and construction of the Project.

SECTION 2. The City hereby declares that it reasonably expects that a portion of the proceeds of the Obligations will be used for reimbursement of expenditures for the acquisition and construction of the Project that are paid before the date of initial execution and delivery of the Obligations.

SECTION 3. The maximum amount of proceeds of the Obligations to be used for reimbursement of expenditures for the acquisition and construction of the Project

that are paid before the date of initial execution and delivery of the Obligations is \$50,000,000.

SECTION 4. The foregoing declaration is consistent with the budgetary and financial circumstances of the City in that there are no funds (other than proceeds of the Obligations) that are reasonably expected to be (i) reserved, (ii) allocated or (iii) otherwise set aside, on a long-term basis, by or on behalf of the City, or any public entity controlled by the City, for the expenditures for the acquisition and construction of the Project that are expected to be reimbursed from the proceeds of the Obligations.

SECTION 5. The Owner shall be responsible for the payment of all present and future costs in connection with the issuance of the Obligations, including, but not limited to, any fees and expenses incurred by the City in anticipation of the issuance of the Obligations, the City's financing fee with respect to the issuance of the Obligations, the City's annual administration fee with respect to administering the provisions of a regulatory agreement with respect to the Project, the cost of printing any official statement, rating agency costs, bond counsel fees and expenses, financial advisor fees and expenses, underwriting discount and costs, trustee fees and expense, and the costs of printing the Obligations. The payment of the principal, redemption premium, if any, and purchase price of and interest on the Obligations shall be solely the responsibility of the Owner. The Obligations shall not constitute a debt or obligation of the City.

SECTION 6. This City Council hereby further determines that it is appropriate for the City to issue the Obligations to finance the acquisition and construction of the Project.

SECTION 7. In the event it is determined that the Bonds will be issued to finance the acquisition, construction and development of the Project, the City Manager is hereby authorized, for and in the name of and on behalf of the City, to make an application to the California Debt Limit Allocation Committee for an allocation of private activity bonds for the financing of the Project or to request the transfer of an existing application, and to execute contracts with bond counsel and the financial advisor in substantially the forms on file with the City Clerk with such changes or deletions as shall be deemed necessary by such officials or staff.

SECTION 8. The adoption of this Resolution is solely for the purpose of meeting the requirements of the Code and shall not obligate the City, without further formal action to be taken by this City Council, to (i) provide financing to the Owner for the acquisition and construction of the Project or to issue the Obligations for purposes of such financing; or (ii) approve any application or request for, or take any other action in connection with, any environmental, General Plan, zoning or any other permit or other action necessary for the acquisition, construction or operation of the Project

SECTION 9. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

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PASSED AND ADOPTED this 3rd day of October, 2007.

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

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