

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Hugh R. Riley, Assistant City Manager 

**DATE:** November 1, 2007 (CC Meeting of 11/7/2007)

**SUBJECT:** Consider Tax Equity Fiscal Responsibility Act (TEFRA) Hearing Related to Essex Moorpark Apartments, LP (GPA 2004-05, ZC 2004-04, RPD 2004-06), on Application by Essex Property Trust, Inc. and Resolution Approving the Issuance of Tax-Exempt Obligations

**DISCUSSION**

Section 6.9 of the Development Agreement between the City of Moorpark and Essex Portfolio, L.P. (Essex), approved by the City Council on July 18, 2007, includes certain requirements that apply if the project is to be a "City-Issued Bond Financed Project." The Agreement requires, among other things, that the Affordable Housing Agreement be executed by the City and the Developer prior to the scheduling of a TEFRA hearing and the issuance of a grading permit. Despite this requirement the City Council authorized and directed the filing of the application by the adoption of Resolution 2007-2640 on October 3, 2007 with the understanding that, in the event the Affordable Housing Agreement is not executed in a timely manner, the City could elect to withdraw its application to CDLAC on or before December 4, 2007. As of this date, review of the Affordable Housing Agreement has not been completed by the City or Essex and Essex has not signed the Development Agreement.

However, since the City's application for tax-exempt financing must include the required TEFRA actions, the City Council is being asked to adopt a resolution which would approve the issuance of multifamily housing revenue bonds for the purpose of financing the acquisition and construction of a multifamily residential housing facility to be located in the City (the "Project"). The purpose of the resolution is to allow the financing to meet a requirement of the Internal Revenue Code of 1986. The adoption of this resolution is one step in the process of financing the proposed Project. Prior to the issuance of bonds the Project will need to receive "private activity bond" allocation from the California Debt Limit Allocation Committee (CDLAC) and the City will subsequently be required to

adopt a resolution which would approve the execution and delivery of certain bond documents that would reflect the terms of the bonds.

The Internal Revenue Code of 1986 (the "Code") requires that the "applicable elected representatives" of the jurisdiction in which a project to be financed with "private activity bonds" is to be constructed adopt a resolution approving the issuance of such "private activity bonds" after holding a public hearing which has been noticed in a newspaper of general circulation in such jurisdiction. The City Council is being asked to hold such public hearing which has been noticed as required by the Code. The proposed resolution would act as the approval by the "applicable elected representatives" with respect to the proposed Project. The CDLAC application for "private activity bond" allocation for a multifamily housing project requires the inclusion of the approval resolution. If the City Council adopts this resolution, the City will continue with the submission to CDLAC of an application for "private activity bond" allocation for the purpose of financing the acquisition and construction of the Project.

As announced in the published notice, this hearing is simply an opportunity for all interested persons to speak or to submit written comments concerning the proposal to issue the debt and the nature or location of the Project. There is no obligation on the part of the City Council to respond to any specific comments made or submitted.

#### **STAFF RECOMMENDATION**

1. Open the public hearing, accept public testimony, and close the public hearing; and
2. Adopt Resolution 2007-\_\_.
3. Authorize the City Manager to withdraw the City's application for Tax Exempt Financing to CDLAC if the Development Agreement and the Affordable Housing Agreement are not executed by Essex by November 30, 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.

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

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Patrick Hunter, Mayor

ATTEST:

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Deborah S. Traffenstedt, City Clerk