

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: January 14, 2019

TO: Honorable Members of the City Council

FROM: Sharon M. Tso *smtso*
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Council File No.: 14-1349-s1, -s2
Assignment No. : 19-01-0016

SUBJECT: Enhanced Infrastructure Financing District (EIFD) Public Financing Authority
Appointments

SUMMARY

On May 22, 2018, the Economic Development Committee (EDC) considered this Office's report (dated April 12, 2018) relative to the establishment of an Enhanced Infrastructure Financing District (EIFD) Policy. The EDC approved the report and instructed this Office and the Economic and Workforce Development Department (EWDD) to report with recommendations on the appointment process to a Public Finance Authority (PFA). Pursuant to EIFD law, a PFA is the administrative body that oversees an EIFD. In response to the EDC's instructions, this Office and EWDD reviewed the City Charter and met with the City Attorney to discuss potential appointment processes. This report describes a PFA's membership requirements and recommends that Council adopt a policy whereby the Mayor and Council appoint members of a PFA, consistent with State law and the City Charter.

RECOMMENDATIONS

That the City Council:

1. Adopt an Enhanced Infrastructure Financing District (EIFD) Public Finance Authority (PFA) appointment process whereby the Mayor appoints the Council members who serve on a PFA and Council appoints the public members to a PFA, with the appointment process policy subject to Council's approval of an EIFD Policy.
2. Instruct EWDD to monitor any changes in EIFD law relative to the PFA membership and report to Council on any proposed changes to the law.

BACKGROUND

State law authorizes local jurisdictions to form an EIFD to finance community revitalization and infrastructure projects, primarily through the use of tax increment financing in a defined geographic area. Prior to forming an EIFD, a local jurisdiction, alone or with other participating taxing entities, must form a PFA. More specifically, State law requires that the legislative body establish a PFA at the same time that it adopts a resolution of intention to form an EIFD. The

PFA, a separate legal entity, would be tasked with the actual formation of an EIFD project area and, among other duties, be responsible for the use of funds collected in the area, securing voter approval for any bond issuance, and maintaining long-term oversight over the EIFD.

PFA Membership and other Requirements

State statute prescribes a PFA's composition and specifies other requirements as noted below.

Membership

(a) The PFA shall have a membership consisting of one of the following, as appropriate:

- (1) If a district has only one participating affected taxing entity, the PFA's membership shall consist of three members of the legislative body of the participating entity, and two members of the public chosen by the legislative body.
- (2) If a district has two or more participating affected taxing entities, the PFA's membership shall consist of a majority of members from the legislative bodies of the participating entities, and a minimum of two members of the public chosen by the legislative bodies of the participating entities.

The appointment of PFA public members under special circumstances, including unscheduled vacancies and emergencies, are subject to certain noticing and timing requirements under the State's Government Code Section 54974.

Other Requirements

EIFD law stipulates that PFA members shall not receive compensation but may receive reimbursement for eligible expenses. In addition, the members of a PFA are subject to penalties resulting from the misuse of public funds. Further, a PFA is considered a local public financing agency subject to the Ralph M. Brown Act, the California Public Records Act, and the Political Reform Act of 1974 requirements.

Recommended Appointment Process

Should Council adopt an EIFD Policy and wish to include a section on the appointment process, our Office recommends a process consistent with State law and the City Charter, whereby the Mayor appoints members from the City Council to serve on a PFA, and Council appoints the public members who serve on a PFA. Described below is the minimum composition of a typical PFA with the City as the single participating affected taxing entity. Should the City partner with another entity, additional members would be appointed by the partnering entity.

- *Legislative Body (Three Members)*
 - To minimize any potential conflict with the City's Charter, this Office recommends that the Mayor appoint Council members to a PFA, including the Council member who represents the geographic area of the EIFD.
- *Public Members (Two Members)*
 - It is recommended that Council appoint the two public members to a PFA.

Additional Considerations Relative to the Appointment Process and PFA Composition

There are additional requirements that Council may wish to consider in its PFA membership policy and future EIFD legislation.

Legislative Body Members


The proposed EIFD Policy does not cap the number of EIFDs the City can form. Given the potential to form numerous EIFDs, each requiring the participation of three City Council members, there may be significant time constraints that would result by forming multiple EIFDs.

Council could consider sponsoring or supporting a change to State law to permit a legislative body to designate representatives to a PFA, rather than elected officials. This would allow Council to appoint designated representatives to a PFA rather than requiring City Council members to serve on multiple PFAs throughout the City.

Public Members

EIFD law does not require public members to have certain expertise or reside in a specified geographic area. A similar tax increment financing tool, Community Revitalization and Investment Authorities (CRIA), requires that the public members of its oversight board either live or work in the CRIA district. Generally, the City's citizen oversight boards/commissions require that members live within City limits. Some boards require members with expertise in various fields or are appointed by the Chair of a specified policy committee.

Council could consider amending the PFA membership policy to require that public members be residents of the City, with a preference for residents or stakeholders of the proposed EIFD geographic area.



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