

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

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Council File No. 16-1800-S2

Council District: Citywide

To: The Honorable Members of the City Council

From: Miguel A. Santana, City Administrative Officer



Subject: **INFORMATION ON THE POTENTIAL USES OF GENERAL OBLIGATION (GO) BOND PROCEEDS FOR PERMANENT SUPPORTIVE AND AFFORDABLE HOUSING**

RECOMMENDATION

That the Council receive and file this report.

SUMMARY

On June 29, 2016, the Council adopted Ordinance 184409 and Resolutions related to placing a \$1.2 billion General Obligation (GO) bond proposition before voters on the November 8, 2016 ballot. At that time the Committee asked that the CAO report back on the allowable uses for the GO bonds proceeds. After additional examination of the relevant issues with the City's Bond Counsel, Nixon Peabody, and the City Attorney, they are prepared to provide a "clean opinion" if the City uses the proceeds to provide loans to developers to fill the affordability gap on permanent supportive and affordable housing projects (like the City's current Affordable Housing Trust Fund Program). Therefore, the City would not have to own the land or the units. A "clean opinion" would assert that the City's bond issuance is in compliance with State law.

BACKGROUND

In July of this year, the CAO and the City Attorney had several meetings with Bond Counsel to explore the breadth of allowable uses for GO bond proceeds as they related to the construction of housing for the homeless. These discussions focused on two questions which were posed to Bond Counsel for further investigation:

Question 1: May the City provide GO bond proceeds to private developers to construct and operate housing and service facilities for the homeless and low income residents where the City does not own the housing or facilities?

Answer 1: Yes

Question 2: Would Bond Counsel give a "clean opinion" on such a use of GO bonds without requiring a validation action?

Answer 2: Yes

California Constitutional Questions

As part of their analysis of the questions posed by City staff, Bond Counsel, identified two California constitutional issues related to the use of GO bond proceeds to provide financing to developers to own and operate housing serving homeless individuals. These questions and responses are shown below:

1. Would such activity constitute an impermissible gift of public funds prohibited by California Constitution Article XVI, Section 6?
2. Would such activity constitute the acquisition or improvement of real property for the purpose of permitting an increase in ad valorem taxes to pay debt service on the GO bonds under California Constitution Article XIII A, Section 1(b)(2) where the real property being acquired or improved is not City property?

Gift of Public Funds

Bond Counsel determined that the facilitation of the construction of housing and facilities for homeless and low income individuals is a valid public purpose. By fulfilling a public purpose while also providing a private benefit, they concluded that the proposed use of GO bond proceeds for that purpose would not constitute a gift of public funds.

Acquisition or Improvement of Real Property

California Constitution Article XIII A, Section 1(b)(2) permits the increase of ad valorem property taxes beyond the one percent maximum mandated by Proposition 13 to pay debt service on bonded indebtedness for the acquisition or improvement of real property that is approved by two-thirds of the votes cast on the ballot proposition. Bond Counsel examined the legislative history behind this Article Section, which did not mention any distinction between the acquisition or improvement of real private property versus real public property.

Bond Counsel discussed the issue of ownership with bond counsel for similar GO bond ballot measures in San Francisco and the counties of Alameda and Santa Clara. Bond Counsel indicated that it is the position of each of those entities that the acquisition or improvement of real property in California Constitution Article XIII A, Section 1(b)(2) is not limited to property owned by the issuer of GO bonds.

Bond Counsel also reviewed the 55-year affordability covenant that the City places on all housing projects provided with City financing. Based on both the constitutional review and covenant, Bond Counsel has advised us that they are prepared to issue a clean bond opinion on the GO bonds for supportive and other affordable housing where the City will not own the properties being acquired or improved.

NEXT STEPS

As directed by the Committee, this Office will begin to work with the Chief Legislative Analyst and the Housing and Community Investment Department to draft the GO Bond Program for Council and Mayor approval.

FISCAL IMPACT STATEMENT

This report is for informational purposes and does not have any fiscal impact.

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