

# HOME Committee Review

## Bond Options for Financing Affordable Housing

### Rubric

#### PROJECT SPECIFIC INFORMATION

AMI/population targets

**GO Bonds** – City can define affordable housing in ballot title that voters approve

**501(c)(3) Bonds** – Tax Code requires certain limits for affordable and workforce (fact specific analysis, ranging from 50-120% AMI). State law provides flexibility under ORS 280.440 discussed below.

Unit Creation Potential

Medium

Type of Housing

**GO Bonds** – multifamily rental or home ownership

**501(c)(3) Bonds** – multifamily rental

#### PARTNERSHIP OPPORTUNITIES

Private partnerships

Yes. Potential partners would include private developers (including local non-profits) benefitting from the financing proceeds as well as other stakeholders including construction and permanent lenders and local employers (e.g. St. Charles Healthcare System, etc.) interested in investing in workforce housing. The partnership relationships will differ depending upon the type of bond program.



<b>Community partnerships</b>	Yes. Potential community partners could include the State acting through OHCS, local employers interested in investing in housing and potential other government entities such as school districts that may also be interested in investing in housing for their staff and/or stakeholders. The partnership relationships will differ depending upon the type of bond program.
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## CONSIDERATIONS FOR IMPLEMENTATION

<b>Program Readiness timeline</b>	6-9 months, dependent upon ballot cycle
<b>Additional Staff Required</b>	Low
<b>Magnitude of initial investment</b>	This will depend upon City's appetite for pursuing a bond issuance, either GO or 501(c)(3) conduit revenue program.
<b>Risks</b>	Risks include the resources required to offer bonds and the development of policies and procedures related to deployment of bond proceeds. Other risks include those related to construction and lease up or sale of housing financed with bond proceeds (i.e. the project does not materialize as affordable housing or workforce housing for some reason).
<b>Proven track record in Oregon</b>	Yes, GO Bonds
<b>Notes</b>	
<b>Anticipated Award per Project</b>	The City has discretion in terms of the ballot title presented to voters with respect to GO Bonds and in the development of policies and programs around a potential bonding program for either GO Bonds or 501(c)(3) Bonds to determine the anticipated award per project (i.e. funds may be used to provide small amounts of gap funding for many projects or used to provide primary financing for a small number of projects).

# Packet

## Title of Program: Bond Options for Financing Affordable Housing

### DESCRIPTION OF PROGRAM:

#### GO Bonds

GO Bonds, secured by an unlimited property tax levy, would be issued by the City following an affirmative vote by the electors of the City. The ballot title for the GO Bond would define affordable housing for purposes of the bond issuance, pursuant to Article XI, Section 9 of the Constitution, which allows certain local governments, such as the City, to lend their credit for the purposes of financing affordable housing as defined in the ballot measure presented to the voters for approval. For example, Metro's ballot title defined affordable housing as *"land and improvements for residential units occupied by low-income households making 80% or less of area median income, which in 2018 for a family of four was \$65,120; improvements may include a mix of unit sizes, spaces for community and resident needs and services. Some units will be accessible for people with disabilities and seniors; flexibility for existing tenants and hardship."* The State Constitution allows the government putting forward the ballot measure to define "affordable housing" and if approved by the voters that definition governs the eligible uses of bond proceeds – providing broad constitutional authority for the City to craft a definition tailored to local needs and priorities.

#### 501(c)(3) Bonds

Private activity bonds issued as 501(c)(3) bonds to obtain tax exempt status would be issued by a governmental entity, such as the City, with the bond proceeds loaned to a separate 501(c)(3) non-profit formed to develop affordable housing or otherwise lessen the burdens of government. ORS 280.440 allows a city to authorize and issue revenue bonds that are secured by revenues from mortgage payments by purchasers in multiple unit housing projects. These housing bonds do not need to be tied to a single project; a single bond issuance may support multiple projects or purposes. The flexibility inherent in State law is subject to restrictions imposed by federal tax law. Notably, this approach of issuing private activity bonds does not require an allocation of volume cap or reliance on low-income housing tax credits (LIHTC) while still providing a path for tax exempt financing. This creates a significant opportunity to expand affordable housing without competing for scarce state resources or federal tax credits.

### BENEFITS TO THE COMMUNITY:

Benefits to the community include:

- Additional funding for affordable housing. Given the restricted rent nature of affordable housing, the projects struggle to support sufficient debt secured by rents to pay for the construction and development of the project.
- Community participation in the creation of much-needed new housing, including potentially through the formation of a separate non-profit entity for the purposes of a 501(c)(3) borrowing.
- In the case of GO Bonds, an unlimited property tax securing the repayment of debt used to finance affordable housing.

## **RISKS:**

Risks include:

- Costs associated with the development of a bond program and policies and procedures related to deployment of bond proceeds and selection of eligible projects.
- Complexity associated with financing affordable housing which generally requires multiple sources of senior and subordinate funding and/or grants, each with related legal and policy requirements and restrictions.
- Financing housing is subject to significant project risks including costs overruns, challenges with lease up and the ongoing challenge of affordable projects generating enough revenue to carry the senior debt needed to build the project. Many affordable projects in Oregon are undergoing some form of restructuring of their initial financing structure. These challenges pose both reputational risk to the City and legal challenges related to the potential failure to use bond proceeds as authorized.

## **KEY TAKEAWAYS:**

### **GO Bonds**

A GO Bond issuance or program for affordable housing would require significant political buy-in from the community and would provide a reliable stream of revenue in the form of an unlimited property tax levy to secure payment of the debt used to finance affordable housing.

### **501(c)(3) Bonds**

A 501(c)(3) bond issuance or conduit bond program would involve issuing revenue bonds, which are then loaned to a non-profit entity developing housing, and would generally be secured by revenues from the project. Such bonds would provide a lower cost of capital for housing developers by qualifying for tax-exempt status.

## **CASE STUDIES:**

### **GO Bonds**

Both the City of Portland and the regional Metro government have issued GO Bonds for affordable housing. The City of Portland, working through its Portland Housing Bureau (PHB), has provided bond proceeds to multiple affordable housing developments largely in the form of subordinate loans to projects. This provides much needed “gap” funding for projects that cannot support any additional senior lien debt. The funds are conditioned on, among other things, the developer entering long-term covenants regarding affordability.

Similarly, Metro has provided gap funding in the form of subordinate loans, as well as financing for affordable home ownership projects (structured as community land trusts). Metro has utilized the expertise of PHB and other participating jurisdictions including counties and housing agencies to allocate, negotiate and distribute the funds on behalf of Metro.

Orrick has served as bond counsel to Metro and represented both Metro and PHB with respect to programmatic matters related to the allocation and distribution of GO Bond proceeds for affordable housing.

### **501(c)(3) Bonds**

Several communities in Oregon including the City of Sutherlin and Tillamook County are currently developing 501(c)(3) bond programs to provide tax-exempt financing for middle income housing. In the case of the City of Sutherlin, they intend to set up their own separate non-profit entity for the purpose of developing housing and receiving bond proceeds. Tillamook County anticipates working with a third-party non-profit developer. Orrick has consulted on a limited basis with these projects, particularly in connection with matters related to the formation of the 501(c)(3) entities.

## **KEY CONTACTS:**

Provide a list of experts or folks at another jurisdiction who might be able/willing to present on a topic for the HOME Committee.

- Brian Kennedy, Metro, Chief Financial Officer
- Pat Lynch, City of Sutherlin, Director of Livability Issues
- Parker Sammons, Tillamook County, Housing Coordinator

## **ADDITIONAL RESOURCES:**

Orrick booklet on middle income housing: <https://www.orrick.com/en/Insights/2024/01/Tax-Exempt-Bond-Financing-for-Middle-Income-Housing>