

Portland's Housing Bond

Appendix B

Frequently Asked Questions (FAQ) on Portland General Obligation Housing (GO) Bond

Introduction

PHB engaged outside counsel to advise PHB concerning the permitted use and expenditure of the proceeds of Portland's GO Housing Bond ("**GO Bond funds**") and related matters. This FAQ is based in part on that advice. PHB is not, however, providing legal, accounting, financial or other advice in the materials that follow. The following is intended to provide general guidance on the Portland GO Housing Bond and the use of GO Bond funds. It is **not**, and is not intended to be, comprehensive in nature, and potential project sponsors and developers should retain their own legal counsel and other appropriate advisors to inform their proposal for an award of GO Bond funds.

Q1. How can the GO Bond be used?

A1. GO Bond funds may be used in a manner similar to PHB's use of tax increment financing ("**TIF**") and other PHB-controlled funds. Specifically, PHB GO Bond funds may be loaned into a project and structured alongside other funding sources such as federal Low Income Housing Tax Credit ("**LIHTC**") equity, senior debt and other governmental and non-governmental funding sources.

Q2. What project costs can be paid with GO Bond funds?

A2. GO Bond funds are restricted to use only for the purposes set forth in Measure 26-179, the Ballot Measure that authorized the GO Bond (the "**Ballot Title**"). Additionally, while the City of Portland anticipates issuing GO Bonds on a taxable basis, under Oregon law the GO Bond funds can be used only to pay for capitalizable costs. As a general matter, "capital costs" include land and other assets having a useful life of more than one year, including costs associated with acquisition, construction, improvement, remodeling, furnishing, equipping, maintenance or repair. "Capital costs" do not include costs of routine maintenance, supplies or general operating expenses.

It should be emphasized that certain "soft" development costs may or may not be capitalizable, including replacement reserves and tenant relocation costs. If proposed costs do not clearly meet the permitted use of GO Bond funds as described in the BOS, sponsor/development teams should seek legal and tax counsel to confirm the legal allocation of such costs to GO Bond funds in their project budgets.

Q3. Will the City impose administrative fees or other charges in connection with the award of GO Bond funds to a Project? If so, what fees are being considered and how should a sponsor/developer treat these fees and charges in their project budgets?

A3. The Ballot Measure authorizing the GO Bonds allows for administrative fees of up to 7% of the deployed GO Bond amount to pay for the delivery of affordable housing units supported by GO Bond funds. PHB intends to impose fees only to the extent that such fees can be paid or reimbursed from GO Bond funds (i.e., fees and costs that qualify as capital costs under City of Portland accounting protocols and Oregon law). These administrative fees will be limited to a Program Delivery Fee and a Construction Administration Fee as described in the Solicitation. Some of these fees may be considered eligible in tax basis for purposes of computing the available LIHTC (i.e. additional tax credit equity may be generated and used to pay some portion of these fees and costs). The computation of tax basis for LIHTC purposes is technical and complex and, as a result, sponsors/developers should not assume that any of these fees and costs will be included in tax credit basis without prior confirmation from their legal and/or tax counsel.

Note that the PHB administrative fees will not be included in the computation of the maximum PHB subsidy per unit and will be instead allocated based on estimated program costs and other costs of delivery.

Q4. How will GO Bond funds be contributed to a project and what restrictive affordability covenants will accompany such funds?

A4. PHB will contribute GO Bond funds into projects as loans. The Bureau has broad discretion to establish the terms, conditions and security for such loans to best meet the Framework goals and project objectives.

Traditionally, PHB has contributed TIF and other resources into projects as subordinated debt with repayment terms ranging from fully amortizing loans, to cash flow dependent loans, to deferred payment loans. PHB intends to continue to use similar loan structures with its GO Bond funds.

A fundamental condition to use of GO Bond funds for qualified project costs is a regulatory agreement recorded each project guaranteeing affordability consistent with the Ballot Title that requires that all units funded with bonds proceeds are made available only to tenants whose income are at 60% AMI or below. The regulatory agreement will be in the first lien priority position. In the event of a default, foreclosure will not operate to terminate the affordability covenants although PHB will retain the option to adjust rents as necessary to meet LIHTC requirements.

Q5. What happens if the sponsor of a project funded with GO Bond funds defaults?

A5. As long as GO Bond funds are expended for permitted purposes as authorized by the Ballot Title and are used to pay project costs that qualify as capital costs under Oregon law, there should be no impacts on the GO Bonds or GO Bond holders in the event of a default with respect to a particular project. The GO Bonds are payable from ad valorem property taxes and not from project revenues.

Q6. Can GO Bond funds be used to finance a mixed-income housing and a mixed-use development?

A6. Under the Ballot Title, GO Bond funds may be used only to pay capital costs associated with housing units occupied by residents with incomes at or below 60% of Area Median Income (AMI). For projects that include workforce, market-rate or other units without income limits or limits above 60% AMI, or for projects that include both housing units and retail or other commercial spaces, GO Bond funds may still be used to pay project costs so long as such costs are “appropriate and reasonable” and can be allocated to the units that are at 60% AMI or below. This will require the sponsor/developer to allocate GO Bond funds and other funding sources separately between the affordable units supported by the GO Bond funds and the non-affordable units or other project components for which GO Bond funds may not be used.

While there is no requirement to condominiumize a building or units, the sponsor/developer will be required to either create separate condominiums or to otherwise legally separate the project in order to facilitate the allocation of costs to discrete GO Bond fund eligible affordable housing components of the project.

Q7. Will PHB fund predevelopment expenses?

A7. PHB expects to use sources other than GO Bond funds to provide predevelopment loans on an “as needed basis.” PHB will require each sponsor/developer to fund at least a portion of the project’s predevelopment costs as a risk sharing requirement. Any PHB predevelopment loan will have a security interest in and/or an assignment of all outputs. In addition, the predevelopment loan will contain project milestones that must be met in order to avoid an event of default.

Q8. Does the so-called 10 Year Rule apply to GO Bond projects?

A8. For proposals in which the City uses GO Bond funds to purchase improved property with the intent to then sell the property to a private sponsor/developer to develop, redevelop, finance, construct or improve as an affordable housing project, the proposer will need to take into account the 10-Year Rule found in Code Section 42(d)(2)(B)(ii) if the project intends to utilize low income housing tax credits (“LIHTCs”).

The 10-Year rule provides, as a general matter, that LIHTCs will not be available to the acquirer of an existing building unless at least 10 years have passed since such building was last placed in service by a prior owner. There are other scenarios in which the 10-Year Rule could limit LIHTC opportunities for a sponsor/developer seeking GO Bond funds, including particularly the acquisition of a property that might be acquired for future rehabilitation and conversion into a qualified project. In these scenarios it will be critical for the proposers to consult with their own tax counsel as each situation must be analyzed based on its own facts.