



**CITY OF BOULDER  
CITY COUNCIL AGENDA ITEM**

**MEETING DATE:** JULY 16, 2019

**AGENDA TITLE**

Consideration of a motion to approve Resolution 1259 authorizing the City of Boulder to assign to the Housing Authority of the City of Boulder, Colorado D/B/A Boulder Housing Partners its 2019 private activity bond cap allocation for the purpose of financing the 30Pearl Apartments.

**PRESENTER/S**

Jane S. Brautigam, City Manager  
Kurt Firnhaber, Director of Housing & Human Services  
Erin Poe, Assistant City Attorney  
Kristin Hyser, Deputy Director of Housing & Human Services  
Renee Gallegos, Community Investment Program Manager

**EXECUTIVE SUMMARY**

Boulder Housing Partners (BHP) is seeking approval to assign the city's 2019 Private Activity Bond (PAB) cap allocation through the Colorado Private Activity Bond Program. Once authorized, BHP will agree to use the 2019 PAB volume cap allocation assigned by the city to issue private activity bonds to support the development and construction of permanently affordable rental units that substantially benefit persons of low income to be located at the intersection of 30<sup>th</sup> Street and Pearl Street, known as 30Pearl Apartments.

## STAFF RECOMMENDATION

Staff recommends City Council authorize the execution of the Resolution 1259 and related documents. The city's authorization to assign its 2019 PAB cap allocation to BHP will allow BHP to issue PAB in a principal amount not to exceed \$5,694,780 for the purpose of financing the development and construction of multifamily rental housing units to be owned and operated by BHP.

### **Suggested Motion Language:**

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to approve Resolution 1259 authorizing the City of Boulder to assign to the Housing Authority of the City Boulder, Colorado D/B/A Boulder Housing Partners its 2019 private activity bond cap allocation for the purpose of financing the 30Pearl Apartments.

## COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Economic – Issuance or assignment of PAB is not a financial obligation of the municipality and no tax money or other municipal revenues are pledged for their retirement.
- Environmental – The 30Pearl property has undergone environmental review in accordance with 24 CFR Part 58 evaluating any negative environmental impacts on the users of the properties and surrounding properties.
- Social – The use of PAB in development financing reduces borrowing costs allowing the affordable housing developer to provide more and higher-quality affordable rental housing serving low-income residents of Boulder.

## BACKGROUND

Private Activity Bonds (PAB) are tax-exempt bonds that can be issued for specific purposes including the financing of residential rental projects. Annually the federal government grants allocations of bonding authority to each state. Through the Colorado PAB Program, municipalities receive an annual allocation of PAB (referred to as PAB capacity or cap) that can be issued to an eligible project, assigned to another issuer, carried-forward for a future project, or relinquished to the statewide balance.

In 2019, the city's PAB volume cap allocation totals \$5,694,780. Assignment of the city's PAB volume cap allocation to BHP requires approval by either the highest elected executive official or the legislative body of the jurisdiction where the project is located. Therefore, BHP is requesting approval by City Council to assign the city's 2019 PAB volume cap allocation to BHP for a proposed multifamily project, known as 30Pearl Apartments, by adopting Resolution 1259 (**Attachment A**) and executing the Assignment (**Attachment B**). While this request is specific to the city assigning its PAB

volume cap allocation to BHP, prior to the actual issuance of bonds, BHP will be required to hold a public hearing to provide the general public the opportunity to comment on the project being financed.

The city's authority to issue or assign its PAB volume cap allocation does not commit any municipal revenues or create a direct obligation for the city to repay investors buying the bonds. The project benefiting from the purchase of the bonds pays back the loan to investors with interest.

### **ANALYSIS**

Following the city's assignment of its \$5,694,780 PAB volume cap allocation to BHP, BHP will take the necessary action to issue the PAB. The bond proceeds will support BHP's development efforts in the construction of a multifamily rental project at 30<sup>th</sup> Street and Pearl Street to be built, owned and operated by BHP.

If the funds are not utilized for the intended use the assignment agreement with BHP will allow them to use the bonds for an alternative city-approved project as long as it shares the same purpose of creating multifamily housing that substantially benefits persons of low income. If in the event the PABs are not utilized, the bonds will expire within three years of being carried forward with no penalty to the municipality or its partners.

### **ATTACHMENTS**

These could include more detailed background and technical analysis, as well as any proposed resolutions, ordinances or other relevant documents.

Attachment A - Resolution 1259

Attachment B - Assignment

## RESOLUTION 1259

A RESOLUTION APPROVING THE ASSIGNMENT TO THE HOUSING AUTHORITY OF THE CITY OF BOULDER, COLORADO, D/B/A BOULDER HOUSING PARTNERS OF \$5,694,780 OF THE CITY OF BOULDER, COLORADO'S 2019 PRIVATE ACTIVITY BOND VOLUME CAP ALLOCATION FROM THE STATE CEILING FOR PRIVATE ACTIVITY BONDS; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT AND OTHER DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, the City of Boulder, Colorado (the "City") is authorized by the County and Municipality Development Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act"), and the Supplemental Public Securities Act, constituting Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended (the "Supplemental Act") and its home rule charter (the "Charter"), to finance projects as defined in the Act, including residential facilities for low- and middle-income persons and families; and

WHEREAS, the City has been awarded on January 1, 2019 \$5,694,780 (the "2019 Allocation") of the bond ceiling for the State of Colorado (the "State") and its issuing authorities pursuant to the Colorado Private Activity Bond Ceiling Allocation Act, constituting Part 17 of Article 32 of Title 24, Colorado Revised Statutes, as amended (the "Allocation Act"), for use in the issuance of private activity bonds to finance projects under the Act; and

WHEREAS, the Allocation Act provides for the assignment of bond allocations between "issuing authorities" (as defined in the Act) of the State; and

WHEREAS, the City desires to assign and transfer to The Housing Authority of the City of Boulder, Colorado, d/b/a Boulder Housing Partners (the "Assignee") \$5,694,780 of the City's 2019 Allocation (the "Assigned Allocation"), which the City and the Assignee will commit and reserve for the issuance of such private activity bonds, to finance "projects" under the Act; and

WHEREAS, the City and the Assignee intend that the Assigned Allocation be utilized for a proposed multifamily project to be located at the intersection of 30<sup>th</sup> Street and Pearl Street, Boulder, Colorado 80304 known as 30Pearl Apartments, or for such other project that is acceptable to the City and the Assignee (the "Project"); and

WHEREAS, it is necessary to evidence such assignment and transfer and the acceptance thereof by the execution and delivery by the City of an Assignment, dated as of July 1, 2019 (the "Assignment"), by and between the City and the Assignee; and

WHEREAS, the Assignee proposes to issue its housing revenue bonds pursuant to the Housing Authorities Law, Part 2 of Article 4 of Title 29, Colorado Revised Statutes, as amended (the "Housing Authority Act") and the Supplemental Act (the "Bonds") to finance "projects" under the Act (the "Project");

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO THAT:

**Section 1.** In order to finance the Project, the City hereby (i) assigns and transfers to the Assignee an amount equal to the Assigned Allocation and (ii) approves, and authorizes and directs the City Manager of the City to sign and deliver and the City Clerk to attest and deliver, the Assignment in substantially the form presented to the City Council. A copy of the proposed Assignment is on file in the office of the City Clerk and is available for inspection by the public.

**Section 2.** The City Manager is hereby authorized and directed to execute and deliver and the City Clerk is hereby authorized and directed to attest and deliver such other agreements and certificates and to take such other actions as may be necessary or convenient to carry out and give effect to the Assignment and this Resolution.

**Section 3.** All actions not inconsistent with the provisions of this Resolution heretofore taken by the City Council and the officers of the City directed toward the assignment of the Assigned Allocation and the authorization of the Assignment hereby are ratified, approved, and confirmed.

**Section 4.** Nothing contained in this Resolution or the Assignment shall constitute a debt, indebtedness or multiple-fiscal year direct or indirect debt or other financial obligation of the City within the meaning of the Constitution or statutes of the State or the home rule charter of any political subdivision thereof, nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

**Section 5.** If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

**Section 6.** This Resolution shall be in full force and effect upon its passage and approval.

INTRODUCED, READ, PASSED AND ADOPTED this 16th day of July, 2019.

CITY OF BOULDER, COLORADO

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Mayor

ATTEST:

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City Clerk

## ASSIGNMENT

**THIS ASSIGNMENT** (the “Assignment”), dated as of this 1st day of July, 2019, is by and between the **CITY OF BOULDER, COLORADO**, a home rule city, municipal corporation and political subdivision of the State of Colorado (the “Assignor”), and **THE HOUSING AUTHORITY OF THE CITY OF BOULDER, COLORADO, D/B/A BOULDER HOUSING PARTNERS**, a body corporate and politic (the “Assignee”);

### WITNESSETH:

WHEREAS, the Assignor has been awarded \$5,694,780 (the “2019 Allocation”) of private activity bond volume cap allocation for the State of Colorado (the “State”) and its issuing authorities (the “State Ceiling”) computed under Section 146(d) of the Internal Revenue Code of 1986, as amended (the “Code”), and under the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes, as amended (the “Allocation Act”), for use in the issuance of private activity bonds; and

WHEREAS, subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept all \$5,694,780 of the Assignor’s 2019 Allocation (the “Assigned Allocation”), which the Assignor has committed and reserved for the issuance of such private activity bonds; and

WHEREAS, the private activity bonds will be issued by the Assignee pursuant to the Housing Authorities Law, Part 2 of Article 4 of Title 29, Colorado Revised Statutes, as amended (the “Housing Authority Act”), and the Supplemental Public Securities Act, Part 2 of Article 57 of Title 11, Colorado Revised Statutes, as amended (the “Supplemental Act”), and such bonds will be used only for “projects” as described in the Act; and

WHEREAS, the Assignor and the Assignee intend that the Assigned Allocation be utilized for a proposed multifamily project to be located at the intersection of 30<sup>th</sup> Street and Pearl Street, Boulder, Colorado 80304 known as 30Pearl Apartments; and

NOW THEREFORE, in exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**Section 1.** The Assignor hereby assigns and transfers to the Assignee the Assigned Allocation. The Assignee agrees to use the Assigned Allocation only for “projects” as described in the Act. In addition, the Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat the Assigned Allocation as an allocation for a project with a carryforward purpose, thus avoiding reversion of such Assigned Allocation to the statewide balance under the Allocation Act, or to assign the Assigned Allocation or a portion thereof to another Assignee.

**Section 2.** The Assignor represents that it has received no monetary consideration for the assignment set forth above.

**Section 3.** The Assignee hereby accepts the assignment of the Assigned Allocation from the State Ceiling described above, subject to the terms and conditions contained herein.

**Section 4.** The Assignor and Assignee each agree that it will take such further action and adopt such further proceedings as may be required to implement the terms of this Agreement, including but not limited to the Assignee filing, an IRS Form 8328 “Carryforward Election of Unused Private Activity Bond Volume Cap” with respect to the Assigned Allocation.

**Section 5.** This Assignment is effective upon execution and is irrevocable.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF BOULDER, COLORADO,  
as Assignor

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City Manager

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney

THE HOUSING AUTHORITY OF THE  
CITY OF BOULDER, COLORADO,  
D/B/A/ BOULDER HOUSING  
PARTNERS, as Assignee

By \_\_\_\_\_  
Its: Executive Director