

Bond Case Briefs

Municipal Finance Law Since 1971

Yes For Affordable Housing - The Impact of Oregon's Measure 102

Oregonians approved statewide ballot Measure 102 on November 6 and, in doing so, have provided local governments in Oregon with a powerful new tool to help address Oregon's affordable housing crisis. The passage of Measure 102 offers new opportunities for partnerships between local governments and private entities to develop and preserve affordable housing throughout Oregon.

Housing Crisis in Oregon

Many Oregonians struggle to afford housing. The cost of housing in Oregon has risen by more than 300 percent since 1980. The National Low Income Housing Coalition reports that more than 50 percent of renters in Oregon are rent-burdened, spending more than 30 percent of their income on housing.[1]

The average Fair Market Rent for a two-bedroom apartment in Oregon is approximately \$1,105, according to the Department of Housing and Urban Development. For such Fair Market Rent to be less than 30 percent of household income (i.e. for a household not to be rent-burdened), annual household income must be at least \$44,214. As a result, there are only a handful of rural, sparsely populated counties in Oregon where a full-time minimum wage worker can afford a two-bedroom apartment at what HUD has determined to be the Fair Market Rent for those counties.[2]

The City of Portland has declared a housing emergency to combat escalating rent prices and homelessness. Likewise, Metro, the regional government in the Portland metropolitan area, has prioritized the funding of affordable housing. Voters in Portland, in 2016, and for Metro, on November 6, approved general obligation bond measures authorizing hundreds of millions of dollars of property-tax-supported funding for affordable housing. Given the passage of Measure 102, other communities across the state may consider similar general obligation bond measures to help address the affordable housing crisis.

How Affordable Housing Projects Are Financed

The vast majority of affordable housing projects are financed with a combination of funding sources, most prominently including federal Low Income Housing Tax Credits ("LIHTC"), and conventional taxable debt or tax-exempt obligations issued by a governmental entity (depending on the LIHTC program being utilized). The LIHTC program provides tax credits to developers who create affordable housing units. These credits, in turn, are sold to private investors to generate funding for the affordable housing project. The LIHTC program requires private ownership of such affordable housing.

Given rising land and construction costs for new affordable housing projects and the rising costs of acquiring and rehabilitating existing affordable housing projects, the funds provided by LIHTC and taxable or tax-exempt debt are rarely sufficient to finance an affordable housing project. These projects must also rely on various other sources to provide the necessary "gap" funding. Sources for gap funding include subordinate loans and grants provided by the State of Oregon, local government

resources including urban renewal funds, and loans, grants and other funds provided by project sponsors, foundations and others.

The Benefits of Measure 102

Prior to the passage of Measure 102, Section 9 of Article XI of the Oregon Constitution prohibited local governments from partnering with private entities to construct projects funded by general obligation bonds for any project that was privately owned. This “lending-of-credit” prohibition contained in the Oregon Constitution, adopted in 1859, states: “No county, city, town or other municipal corporation, by vote of its citizens, or otherwise, shall become a stockholder in any joint company, corporation or association, whatever, or raise money for, or loan its credit to, or in aid of, any such company, corporation or association.”

Measure 102 creates an affordable housing exception to the lending-of-credit prohibition. With voter approval of Measure 102, Oregon counties and cities can now ask their voters to approve property-tax-supported general obligations bonds to finance the construction and preservation of affordable housing without requiring governmental ownership of such housing, making LIHTC and other private capital available for such housing. Measure 102 requires each local government issuing general obligation bonds for affordable housing to define how a specific bond issue may be used and the type of affordable housing that can be financed. This measure-specific requirement will provide local governments with flexibility in determining the appropriate projects to support, ranging from deeply affordable projects for people earning much less than area median income, to workforce housing for people earning higher wages, possibly at or higher than area median income, all depending on specific community needs.

With the passage of Measure 102, the proceeds of general obligation bonds approved and issued to finance affordable housing can be used as a much-needed source of gap financing for affordable housing projects. Leveraging property-tax-supported funds with private LIHTC investment and debt will create and preserve many more affordable housing units than would be possible under a public ownership model and should operate to close the funding gap on projects that would not otherwise be feasible. Measure 102 provides local Oregon communities with an opportunity to increase the stock of affordable housing and become key players in addressing and finding solutions to Oregon’s affordable housing crisis.

Orrick’s Affordable Housing Finance Expertise

The Portland-based lawyers who work in Orrick, Herrington & Sutcliffe’s public finance practice have unmatched experience in affordable housing finance, serving as Bond Counsel to state and local issuers of housing bonds in Oregon, and representing banks and underwriters who provide capital for affordable housing projects. We also regularly represent Oregon local governments and special districts in the issuance of voter-approved general obligation bonds, providing us with a unique combination of expertise in the implementation of Measure 102. Please feel free to contact the Orrick team if you want to learn more about Measure 102 and the possibilities it provides for financing affordable housing in your community.

[1] “Out of Reach 2018: Oregon,” National Low Income Housing Coalition, available at <https://nlihc.org/or/oregon>.

[2] Id.

