



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 5, 2024

AGENDA TITLE

Consideration of a motion to adopt Resolution 1352 approving the assignment of City of Boulder’s 2024 Private Activity Bond volume cap allocation from the state ceiling for Private Activity Bonds in the amount of \$6,647,089 to the Housing Authority of the City of Boulder, D/B/A Boulder Housing Partners, a body corporate and politic of the State of Colorado, which will be carried forward to construct multifamily residential housing benefiting persons of low income; and authorizing the execution and delivery of an assignment and other documents in connection therewith.

PRESENTER(S)

Nuria Rivera-Vandermyde, City Manager
Kurt Firnhaber, Director of Housing & Human Services
Erin Poe, Deputy City Attorney
Elizabeth Crowe, Deputy Director of Housing & Human Services
Eli Urken, Housing Investment Senior Project Manager

EXECUTIVE SUMMARY

The City of Boulder is seeking to assign \$6,647,089 of the City’s 2024 Private Activity Bonds (PAB) volume cap to be issued in 2025, 2026, or 2027 by Boulder Housing Partners (BHP) through the Colorado Private Activity Bond Ceiling Allocation Act. The PAB will help BHP finance the construction of a permanently affordable housing project – the 34th Street Project – resulting in creating 44 new permanently affordable rental homes.

STAFF RECOMMENDATION

Staff recommends City Council authorize the execution of Resolution 1352, and related documents, to assign 2024 PAB cap in the amount of \$6,647,089 to be used by BHP for future housing projects. Action on the part of City Council requires approving the attached inducement resolution (**Attachment A**) and assignment (**Attachment B**). This resolution preserves the PAB cap for use by BHP in multifamily rental projects in Boulder by the December 31, 2027 expiration.

Suggested Motion Language:

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

Motion to adopt Resolution 1352 authorizing the City of Boulder, Colorado to execute an assignment of the 2024 City of Boulder Private Activity Bonds in the amount of \$6,647,089 to be used by the Housing Authority of the City of Boulder, Colorado, D/B/A Boulder Housing Partners for the purpose of financing the construction of permanently affordable rental housing in the City of Boulder; and authorizing the city manager to execute and deliver the assignment and other documents in connection therewith.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** - Assignment, issuance or delegation of PAB is not a financial obligation of the municipality, and no tax money or other municipal revenues are pledged for their retirement.
- **Environmental** - Properties supported using PAB undergo 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 affordable rental projects. Annually the federal government grants allocations of bonding authority to each state. Through the Colorado Private Activity Bond Ceiling Allocation Act municipalities receive an annual allocation of PAB volume cap (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.

PABs provide the opportunity to finance affordable housing rental projects without a direct financial obligation from the municipality. As well, tax money and municipal revenues are not pledged for the retirement of the bonds. Projects financed using PABs generate local economic activity including new income, jobs, and tax revenues. The project sponsor pays the principal and interest on the bonds and there is no recourse to the City in the event of default. Since the interest on the bonds is exempt from federal income taxes, the sponsor benefits from a lower interest rate than other traditional forms of financing. In the event the bonding capacity is unused, it will expire with no cost or consequence to the City.

In 2024, the City’s PAB volume cap allocation is \$6,647,089. In July 2024, the City announced it was seeking proposals from affordable housing providers interested in accessing the city’s direct PAB allocation to pursue development projects resulting in permanently affordable housing units serving low- and moderate-income households. The City received one request.

<i>Application (Applicant)</i>	<i>Activity</i>
34 th Street Project (Boulder Housing Partners)	New Construction

All applications were evaluated according to the established PAB priorities of the City: (1) Readiness to Proceed; (2) Deepest Affordability; and (3) Number of Units to be Preserved/Created. If an application does not receive an allocation from the City’s PAB volume cap the applicant can pursue bonds from the statewide balance available through the Department of Local Affairs.

After a thorough review of the request, it was found that the project met the City’s established requirements including affordability and number of units. Staff proposes to assign PAB volume cap to the project.

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.

The option to carry-forward bond cap for eligible purposes is permissible under the Colorado Private Activity Bond Ceiling Allocation Act to be used for an eligible purpose to close within 3 years. BHP is requesting this action to support construction of permanently affordable housing – 34th Street Project in Boulder.

The 34th Street project, formerly known as the Orchard Grove project, will create 44 new affordable rental homes at 3125 34th Street, and is proposed to be a vibrant, ultra-sustainable and 100% permanently affordable community of 44 homes. The one, two, and three-bedroom townhome style rental apartments will serve a range of AMI’s from 30% through 60%. This all-electric community will offer unique amenities such as a wildlife corridor, nature path, a net-zero community center, as well as community and pollinator gardens and a playground.

ANALYSIS

Approval of Resolution 1352 will enable the creation of affordable rental housing units, advancing the City HHS affordability goals and helping meet needs among low-income community members.

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, and there is no recourse to the City in the event of default.

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 or preserving affordable multifamily housing. If in the event the PABs are not utilized, the PABs will expire within three years of being carried forward with no penalty to the municipality or its partners.

NEXT STEPS

Upon City Council's adoption of Resolution 1352, BHP will take the necessary action to carry forward the allocation until it issues the PAB. The bond proceeds will support BHP's construction of 44 permanently affordable multifamily rental units for the 34th Street Project – which will continue to be owned and operated by BHP.

ATTACHMENT(S)

A – Resolution 1352

B – Assignment

RESOLUTION 1352

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF THE CITY OF BOULDER’S 2024 PRIVATE ACTIVITY BOND VOLUME CAP OF \$6,647,089 TO THE HOUSING AUTHORITY OF THE CITY OF BOULDER, COLORADO; AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, HEREBY FINDS AND RECITES THAT:

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, 2024, \$6,647,089 (the “2024 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, a body corporate and politic of the State of Colorado (the “Assignee”) \$6,647,089 of the 2024 Allocation (the “Assigned Amount”), 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, it is necessary to evidence such assignment and transfer and the acceptance thereof by the execution and delivery by the City of an Assignment (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 “Projects”);

NOW, THEREFORE, BASED ON THE FINDINGS MADE IN THIS RESOLUTION, ABOVE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO THAT:

Section 1. In order to finance the Projects, the City hereby (i) assigns and transfers to the Assignee an amount equal to the Assigned Amount; 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 Amount 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.

[Signatures on the following page]

ADOPTED this ____ day of September, 2024.

CITY OF BOULDER, COLORADO

Mayor

ATTEST:

City Clerk

ASSIGNMENT

THIS ASSIGNMENT (the “Assignment”), dated as of this ____ day of September, 2024, 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 OF THE STATE OF COLORADO** (the “Assignee”);

WITNESSETH:

WHEREAS, the Assignor has been awarded \$6,647,089 (the “2024 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 \$6,647,089 of the Assignor’s 2024 Allocation (the “Assigned Amount”), 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 (the “Projects”); 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 Amount. The Assignee agrees to use the Assigned Amount only for the Projects. In addition, the Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat the Assigned Amount as an allocation for a project with a carryforward purpose, thus avoiding reversion of such Assigned Amount to the statewide balance under the Allocation Act, or to assign the Assigned Amount 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 Amount 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 Amount.

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

By _____
Its: City Manager

ATTEST:

Its: City Clerk on behalf of the Director of
Finance and Record

APPROVED AS TO FORM:

City Attorney

HOUSING AUTHORITY OF THE CITY OF
BOULDER, COLORADO, D/B/A BOULDER
HOUSING PARTNERS, A BODY
CORPORATE AND POLITIC OF THE
STATE OF COLORADO, as Assignee

By _____
Its: Executive Director