



CITY ATTORNEY'S OFFICE

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3403 •

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CITY COUNCIL INFORMATIONAL MEMORANDUM

September 30, 2026

To: Cupertino City Council

From: Floy Andrews, Interim City Attorney and John Cardenas, Special Counsel

Re: Procedures and Municipal Protections under California Municipal Finance Authority Conduit Bond Issuances

Summary: This Informational Memorandum describes the California Municipal Finance Authority (CMFA) procedural protections afforded local governments when issuing conduit bonds for affordable housing and community projects. The CMFA operates as an independent public entity, ensuring its financial debts and legal obligations remain completely separate from its member cities. Because bonds are issued on a conduit basis, the private borrower bears sole repayment responsibility, insulating the host city from any debt liability. Member cities maintain the right to unilaterally withdraw from the agreement at any time without facing exit fees or trailing financial obligations.

A. CMFA Authority and Conduit Bond Issuance Processes

The CMFA is a joint exercise of powers authority and public entity of the State of California. It functions to assist local governments, non-profit organizations, and businesses with the issuance of taxable and tax-exempt bonds aimed at improving the standard of living, economic development, and charitable activities throughout California. A joint exercise of powers agreement (JPA) under the California Government Code Section 6500 (and following) provides authority for the CMFA to issue bonds for a project; the host municipality must execute this agreement to become a formal member.

Acting as a conduit issuer means the CMFA serves as the municipal issuer of the bonds on behalf of a private entity (the Borrower) to secure financing for community projects like affordable housing. The bonds are the sole responsibility of the Borrower, meaning the city incurs no debt, financial liabilities, or legal obligations for the repayment of the bonds.

To facilitate a conduit issuance, the host city must conduct a public hearing under the Tax and Equity Fiscal Responsibility Act (TEFRA), adopt an approving resolution, and execute the Joint Exercise of Powers Agreement. Outside of these specific administrative approvals, no further participation or activity from the City Council is required.

Becoming a member and approving conduit financing carries no cost or financial exposure to the city. Instead, through its conduit issuance activities, the CMFA shares a portion of its received issuance fees back with the member community's general fund, which can be used for any lawful municipal purpose.

B. JPA Agreement

The JPA for the CMFA is published and publicly accessible. As a public entity formed under the California Joint Exercise of Powers Act (California Government Code Section 6500 et seq.), its founding documents are public records.

Because hundreds of California cities, counties, and special districts have joined the CMFA, the standard CMFA Joint Exercise of Powers Agreement is routinely published online within city council meeting packets, staff reports, and public archives. The foundational January 1, 2004 agreement is also published as part of historical regulatory disclosures, such as public comments submitted to the U.S. Securities and Exchange Commission (SEC).

The standard, published text of the JPA agreement relating to the CMFA contains clauses that explicitly protect member municipalities and clarify operational flexibility. The JPA agreement contains explicit language establishing that the CMFA is an independent public entity distinct from the cities and counties that join it. The text provides that the debts, liabilities, and obligations of the CMFA do not constitute debts, liabilities, or obligations of the individual member agencies executing the agreement.¹ Because bonds are issued on a "conduit" basis on behalf of private borrowers (such as affordable housing developers), the text ensures that the bonds are the sole responsibility of the borrower.² Member cities have no financial, legal, or contractual obligation for the repayment of any bonds issued through the authority.

Unlike other regional infrastructure JPAs that lock member agencies into long-term funding obligations, the CMFA agreement is designed with flexibility to accommodate hundreds of municipal members across the state. Any member city, county, or special district can unilaterally withdraw from the agreement at any time by providing written notice to the Board of Directors of the CMFA. There are no financial exit fees or trailing funding obligations

¹ Section 3.A of the agreement text explicitly states: "*said Authority shall be a public entity separate and apart from the Members. Its debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members.*".

² Section 8 ("Bonds") of the CMFA JPA Agreement provides that the principal, premium, or interest on issued conduit bonds shall never constitute an obligation of the member municipalities or require municipal appropriations.

associated with leaving. The withdrawal of a hosting city does not disrupt or accelerate any conduit bonds already actively issued and outstanding; those agreements remain tied to the specific project borrower independently.

The agreement itself is streamlined (typically only a few pages long) and contains the following structural sections:

1. Recitals: Citing California Government Code Sections 6500 et seq. as the authorizing framework.
2. Section 1 (Purpose): Defining the goal of assisting with taxable and tax-exempt financing.
3. Section 2 (Term & Termination): Detailing how the authority persists until dissolved by all members.
4. Section 3 (Authority Creation & Powers): Outlining the formal separation of the authority from its members.
5. Section 7 (Individual Capacity Liability): Explicitly stating that no board members, directors, or officers can be held personally liable for bond issuances.
6. Execution Page: A basic signatory block for the joining city's Mayor, City Clerk, and approved City Attorney.

C. Conduit Instruments

Participating municipalities have absolutely zero financial obligation, debt liability, or repayment responsibility for any bonds issued through the CMFA. The bonds are issued as "conduit" instruments, meaning the private developer or nonprofit organization (the Borrower) is solely responsible for the repayment of the principal, interest, and premium. All financing and bond documents must contain clear, explicit disclaimers stating that the bonds are not obligations of the city or the State of California, but are to be paid for entirely from funds provided by the Borrower.

Participation in the CMFA does not count against a city's constitutional debt or appropriations limits. It does not impact the municipal credit rating, nor can any city general funds or taxpayer revenues ever be used or attached to satisfy a bond default. The city's role is administrative in hosting the mandatory public hearing and passing a local resolution to allow the financing to proceed inside its borders.

D. Fee Mechanics

A participating city incurs no fees or costs for the bond issuance. The operational framework of the CMFA provides that participating local governments are entirely insulated from any administrative or upfront expenses. All legal fees, underwriter fees, project design costs, and general closing costs are paid directly out of the bond proceeds or funded up-front by the private developer/borrower. There is no fee for a city to sign the Joint Exercise of Powers Agreement, nor is there a charge for holding the required TEFRA public hearing.

The CMFA charges an issuance fee to the developer and legally shares 25% of that fee directly back with the host city's General Fund. This cash grant can be used for any lawful municipal purpose. The mechanism and percentage breakdown of the fee-sharing program are published directly within the authority's official scheduling policies and municipal disclosures. The obligation to distribute a portion of the closing proceeds to local governments is codified in the California Municipal Finance Authority Fee Schedule Notes.³ When a city files a Conduit Financing Staff Report to join or authorize an issuance, the required text describes how proceed revenue arrives at the local treasury.

Prepared by: John Cardenas, Special Counsel
Reviewed by: Floy Andrews, Interim City Attorney
Approved for Submission by: Tina Kapoor, City Manager

³ Note 1 of the Official CMFA Fee Schedule Document states: "CMFA shares 25% of all Issuance Fees with the Host Municipality for each transaction." The CMFA website states, "The CMFA shares 25% of all issuance fees directly with its member communities. In addition, a grant equal to 25% of the issuance fee is made to the California Foundation for Stronger Communities ("CFSC") to fund charities designated by the member communities."