

**REGULAR MEETING AGENDA - ORANGE COUNTY HOUSING FINANCE TRUST**

**WEDNESDAY, APRIL 27, 2022 - 10:00 A.M.**

**MEETING WILL BE HELD VIA TELECONFERENCE/VIDEOCONFERENCE ONLY**

**DOUG CHAFFEE**

Chairman

**STEPHEN FAESSEL**

Vice Chairman

**DON BARNES**

Director

**LISA A. BARTLETT**

Director

**JAMEY FEDERICO**

Director

**SHARI FREIDENRICH**

Director

**FRED JUNG**

Director

**DAVID PENALOZA**

Director

**ED SACHS**

Director

Trust Manager

**Adam Eliason**

Trust Counsel

**Jacqueline Guzman**

Clerk of the Trust

**Robin Stieler**

**GUIDANCE FOR PUBLIC ACCESS TO REDUCE RISK OF COVID-19:** On September 16, 2021, Governor Gavin Newsom signed into law Assembly Bill 361 authorizing a local legislative body to hold public meetings via teleconferencing and make public meetings accessible telephonically or electronically to all members of the public due to the State of Emergency resulting from the threat of Novel Coronavirus (COVID-19). To ensure the safety of the Commissioners and staff, and for the purposes of limiting the risk of COVID-19, in-person public participation at this meeting of the Commission will not be permitted. This meeting will be held via Zoom. Members of the public can listen to and participate in the live meeting by accessing the following:

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/84204035342?pwd=U1Z6SFNoQlBBQklQZmpBZVJidzJxQT09>

Passcode: 746778

Or One tap mobile :

US: +16699009128,,84204035342# or +12532158782,,84204035342#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 9128 or +1 253 215 8782 or +1 346 248 7799 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592

Webinar ID: 842 0403 5342

Members of the public may address the Commission regarding any item in one of two ways:

1. Real-time Comment – To provide a real-time public comment during the meeting, please access the Zoom information identified above. Speakers will be recognized by the Commission Chair at the time the agenda item is to be considered. If attending virtually via Zoom, use the hand-raise icon to be called on for public comment, and if calling in via telephone, dial \*9. A speaker's comments shall be limited to three minutes. Anyone causing disruption can be removed from the meeting at the discretion of the Chair.

2. Written Comment – The Commission is also accepting public comments to be submitted by emailing them to [aeliason@ochft.org](mailto:aeliason@ochft.org). The comments will be distributed to all of the Directors and read into the record. If you wish to comment on a specific agenda item, please identify the item in your email. General public comments will be addressed during the general public comment item on the agenda. In order to ensure that staff has the ability to provide comments to the Directors in a timely manner, please submit your

comments by 12:00 p.m. on April 26, 2022. Public comments will be made available to the public upon request. In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the Clerk of the Board's Office 72 hours prior to the meeting at (714) 834-2206

Except as otherwise provided by law, no action shall be taken on any item not appearing in the agenda. When addressing the Orange County Housing Finance Trust, please state your name for the record prior to providing your comments.

*All supporting documentation is available for public review online at:  
www.OCHFT.org and in the office of the Clerk of the Board of Supervisors located in the  
Hall of Administration Building, 333 W. Santa Ana Blvd., 10 Civic Center Plaza, Room 465,  
Santa Ana, California 92701 during regular business hours,  
8:00 a.m. - 5:00 p.m., Monday through Friday.*

## **CALL TO ORDER**

## **PLEDGE OF ALLEGIANCE**

## **ROLL CALL**

## **CONSENT CALENDAR ITEMS (Item 1):**

1. Approve Orange County Housing Finance Trust minutes from the April 13, 2022, meeting

## **DISCUSSION ITEMS (Item 2):**

*At this time, members of the public in attendance may ask the Board to be heard, and emails received by members of the public will be read into the record on the following items as those items are called.*

2. Adopt Resolution finding that, due to the proclaimed state of emergency arising from the Novel Coronavirus (COVID-19) and local officials continued recommended measures to promote social distancing, it is necessary for Directors to participate in the meetings via teleconferencing
3. Authorize and consent to the continued legal representation by the Office of the County Counsel utilizing an ethical wall due to a potential conflict of interest

## **HOUSING TRUST MANAGER REPORT (Item 3):**

4. Oral Report from the Housing Trust Manager

## **PUBLIC COMMENTS:**

*At this time members of the public may address the Trust, and emails received by deadline will be read into record on any matter not on the agenda but within the jurisdiction of the Trust. The Trust or Chair may limit the length of time each individual may have to address the Trust, and emails received are to be read.*

## **DIRECTOR COMMENTS:**

## **ADJOURNED:**

**NEXT MEETING:** May 18, 2022, at 10:00 a.m.

# Agenda Item 1

Minutes – April 13, 2022

**REGULAR MEETING SUMMARY ACTION MINUTES  
ORANGE COUNTY HOUSING FINANCE TRUST**

**WEDNESDAY, APRIL 13, 2022, 10:00 A.M.**

**DOUG CHAFFEE**  
Chairman

**STEPHEN FAESSEL**  
Vice Chairman

**DON BARNES**  
Director

**LISA A. BARTLETT**  
Director

**JAMEY FEDERICO**  
Director

**SHARI FREIDENRICH**  
Director

**FRED JUNG**  
Director

**DAVID PENALOZA**  
Director

**ED SACHS**  
Director

Trust Manger  
Adam Eliason

Trust Counsel  
Jacqueline Guzman

Clerk of the Trust  
Robin Stieler

ATTENDANCE: Directors Barnes, Bartlett, Chaffee, Faessel, Federico, Freidenrich, Jung and Penaloza  
(All Members participated via Zoom)

ABSENT: Director Sachs

PRESENT: Trust Counsel  
Clerk of the Trust

Jacqueline Guzman  
Valerie Sanchez, Chief Deputy

**CALL TO ORDER**

The Chairman called the meeting to order at 10:01 a.m.

**PLEDGE OF ALLEGIANCE**

Director Faessel led the pledge of allegiance

**ROLL CALL**

The Clerk called the roll and confirmed quorum

**CONSENT CALENDAR (Item 1)**

1. Approve Orange County Housing Finance Trust minutes from the March 16, 2022, meeting  
**ON THE MOTION OF DIRECTOR FAESSEL, SECONDED BY DIRECTOR FEDERICO, BY A VOTE OF 8 TO 0, WITH DIRECTOR SACHS BEING ABSENT, APPROVED THE ORANGE COUNTY HOUSING FINANCE TRUST MINUTES FROM THE MARCH 16, 2022 MEETING**

**DISCUSSION ITEMS (Item 2):**

2. Adopt Resolution finding that, due to the proclaimed state of emergency arising from the novel coronavirus (COVID-19) and local officials continued recommendations for measures to promote social distancing, it is necessary for Directors to participate in the meetings via teleconferencing  
**ON THE MOTION OF DIRECTOR BARNES, SECONDED BY DIRECTOR BARTLETT, BY A VOTE OF 7 TO 1, WITH DIRECTOR FEDERICO VOTING NO AND DIRECTOR SACHS BEING ABSENT, THE BOARD APPROVED ITEM AS RECOMMENDED**

**HOUSING TRUST MANAGER REPORT (Item 3)**

3. Oral Report from the Housing Trust Manager  
**TRUST STAFF HAS BEEN WORKING WITH THE TRUST CLERK TO IDENTIFY ALTERNATE MEETING LOCATIONS THAT WOULD PROVIDE SPACE NEEDED TO MAINTAIN THE SOCIAL DISTANCING RECOMMENDATION ALLOWING INDIVIDUALS AT HIGHER RISK OF SEVERE COVID-19 TO PARTICIPATE IN THE MEETINGS WHEN THE TRUST RETURNS TO MEETING IN PERSON; IN ORDER TO CONTINUE HAVING AN OPTION TO CONDUCT MEETINGS VIRTUALLY, THE TRUST MUST MEET AGAIN IN TWO WEEKS TO MAKE THE FINDINGS WITHIN THE 30-DAY REQUIREMENT**

**PUBLIC & TRUST COMMENTS:**

PUBLIC COMMENTS: None

**DIRECTOR COMMENTS:**

**Chairman Faessel** – Oral re: Met with representatives of Congressman Lou Correa’s office at the Anaheim Salvation Army’s Center of Hope site that the Trust supported and discussed potential additional funding that may be coming to Orange County

**ADJOURNED:** 10:26 a.m.

**NEXT MEETINGS:** April 27, 2022 at 10:00 a.m.

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**DOUG CHAFFEE**  
*Chair, Orange County Housing Finance Trust*

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**ROBIN STIELER**  
*Clerk of the Orange County Housing Finance Trust*

## Agenda Item 2

Resolution to allow meetings  
via teleconferencing

**REQUEST FOR ORANGE COUNTY HOUSING FINANCE TRUST (OCHFT) BOARD ACTION**

**MEETING DATE:** April 27 ,2022

**SUBJECT:** Adopt Resolution finding that, due to the proclaimed state of emergency arising from the Novel Coronavirus (COVID-19) and local officials continued recommended measures to promote social distancing, it is necessary for Directors to participate in the meetings via teleconferencing.

**RECOMMENDED ACTION:**

ADOPT RESOLUTION FINDING THAT, DUE TO THE PROCLAIMED STATE OF EMERGENCY ARISING FROM THE NOVEL CORONAVIRUS (COVID-19) AND LOCAL OFFICIALS CONTINUED RECOMMENDED MEASURES TO PROMOTE SOCIAL DISTANCING, IT IS NECESSARY FOR DIRECTORS TO PARTICIPATE IN THE MEETINGS VIA TELECONFERENCING.



Adam B. Eliason, Manager

**SUMMARY:**

Adoption of the attached resolution will allow the Board of Directors to make certain findings in order to continue meet via teleconferencing so long as social distancing is recommended by local officials.

**DISCUSSION:**

The Orange County Housing Finance Trust (Trust) met on February 4, 2022, considered the circumstances surrounding the proclaimed state of emergency due to the COVID-19 pandemic and found that meeting in person would present imminent risk to the health and safety of its attendees. Subsequent to the initial finding, the Trust met on February 16, 2022, and March 16, 2022 to reconsider the proclaimed state of emergency and found that meeting in person would

continue to present imminent risk to the health and safety of its attendees. The County of Orange Health Officer revised his Orders and Strong Recommendations on March 11, 2022. As part of the revised Orders and Strong Recommendations, the Health Officer continues to strongly recommend social distancing for certain populations. During the April 13, 2022 meeting the Board reconsidered the proclaimed state of emergency, the Health Officer's strong recommendation and the ability to comply with that strong recommendations found that it was necessary for Directors to participate in the meetings via teleconferencing.

If adopted, the attached resolution would continue to comply with the requirements found in Government Code section 54953 (e) by considering the proclaimed state of emergency, the Health Officer's strong recommendation and the ability to comply with that strong recommendation. Once staff finds an appropriate and available meeting room, this could include the option for some members to appear in person while others appear via teleconferencing as a measure to ensure social distancing. Should the resolution not be adopted, the Board of Directors would need to attend the Trust's next meeting in person.

ATTACHMENT:

Attachment A      Resolution



RESOLUTION OF THE BOARD OF DIRECTORS OF  
THE ORANGE COUNTY HOUSING FINANCE TRUST  
April 27, 2022

WHEREAS, California Government Code section 54953 (e) authorizes local agencies to use teleconferencing without complying with certain requirements during a proclaimed state of emergency; and

WHEREAS, this Board reviewed and considered the circumstances of the current state of emergency due to COVID-19 on February 4, 2022 and found that meeting in person would present imminent risk to the health and safety of its attendees; and

WHEREAS, on February 4, 2022, this Board resolved that it would meet virtually in accordance with Government Code section 54953 (e) and adopted its regular meeting calendar accordingly; and

WHEREAS, on February 16, 2022 and March 16, 2022, this Board reconsidered the circumstances of the current state of emergency due to COVID-19 and found that meeting in person would present imminent risk to the health and safety of its attendees; and

WHEREAS, The County of Orange Health Officer revised his Orders and Strong Recommendations on March 11, 2022;

WHEREAS, as part of the revised Orders and Strong Recommendations, the Health Officer strongly recommended social distancing for “Vulnerable Populations,” consistent with the Centers for Disease Control guidelines; and

WHEREAS, on April 13, 2020, this Board found that it was not possible for members of the Board of Directors to safely socially distance themselves from each other when conducting the business of the Orange County Housing Finance Trust during its regular meetings; and

WHEREAS, in order to meet virtually, this Board must also make certain findings no later than every 30 days; and

WHEREAS, this Board has presently reviewed and considered the circumstances of the State of Emergency due to COVID-19; and

WHEREAS, this Board has presently reviewed and considered manners by which they may be able to adhere to the Strong Recommendations of the Orange County Health Officer.

NOW, THEREFORE, BE IT RESOLVED that

1. The above findings and recitals are true and correct and are incorporated herein in full by this reference
2. The Orange County Housing Finance Trust Board of Directors has reconsidered the circumstances of the state of emergency and determines that, due to state or local officials continued imposition and/or recommend measures to promote social distancing, it cannot safely adhere to the County of Orange Health Officer Orders and Strong Recommendations to socially distance; and

3. In order to adhere to the County of Orange Health Officer Orders and Strong Recommendations to socially distance, it is necessary for Directors to participate in the meetings via teleconferencing.

Agenda Item 3  
Authorize Continued Legal  
Representation

**REQUEST FOR ORANGE COUNTY HOUSING FINANCE TRUST (OCHFT) BOARD ACTION**

**MEETING DATE:** April 27 ,2022

**SUBJECT:** AUTHORIZE AND CONSENT TO THE CONTINUED LEGAL REPRESENTATION BY THE OFFICE OF THE COUNTY COUNSEL UTILIZING AN ETHICAL WALL DUE TO A POTENTIAL CONFLICT OF INTEREST.

**RECOMMENDED ACTION:**

AUTHORIZE AND PROVIDE INFORMED CONSENT TO THE REPRESENTATION BY THE OFFICE OF THE ORANGE COUNTY COUNSEL UTILIZING AN ETHICAL WALL AS DESCRIBED IN ATTACHMENT A.



Adam B. Eliason, Manager

**SUMMARY:**

Consenting to the continued representation of the Office of the Orange County Counsel will allow the Trust to continue to use the legal services contemplated in the previously approved Memorandum of Understanding between the Trust and the County of Orange.

**DISCUSSION:**

The Office of the Orange County Counsel has been providing legal services to the Trust pursuant to an agreement entered into between the Trust and the County of Orange (the "County") in 2020 for the provision of various services by County staff. The Board of Directors received a letter dated April 18, 2020, from the Office of the Orange County Counsel informing the Board of Directors that a potential conflict in representation exists. As described in the letter, the Trust has commenced awarding loan funds to various affordable housing projects for which the County has also awarded funds. The potential conflict in representation exists between the Trust and the County as they negotiate their various necessary documents to fund the loans on the affordable housing projects they support.

As set forth in the letter that accompanies this Staff Report as Attachment “A,” the County Counsel is asking, as it is required to do by professional rules of conduct and ethical obligations, that the Board of Directors provide informed consent to the continued representation by the Office of the Orange County Counsel. The County Counsel’s request for informed consent includes the following terms, conditions, and commitments:

1. Establishment of an “ethical wall” around the attorneys assigned to represent the County, on the one side, and the Trust, on the other.
2. Senior Deputy Jacqueline Guzman (supervised by Supervising Attorney Mark Servino and Chief Assistant James Harman) has been assigned to provide advice on the matter to the County.
3. Supervising Attorney Lauren Kramer and Deputy Ray Diaz (supervised by Senior Assistant Nicole Walsh) have been assigned to represent the Trust.
4. These attorneys will have equivalent levels of legal and administrative support.
5. They are each fully capable and committed to advocating zealously for their assigned offices.
6. Neither set of attorneys will have access to the electronic files and working papers of the other.
7. Paper files will be marked in bold red letters with the names of the attorneys and support staff who are on the assigned team.
8. Each attorney team will be assigned different support staff.

Staff believes that the requested informed consent is appropriate under these circumstances, given that the County Counsel’s proposed representation of the Trust and its representation of the County will be handled by separate attorneys within the Office of the Orange County Counsel, whose work will be shielded from access by others through establishment of an ethical wall.

ATTACHMENT:            Attachment A



**OFFICE OF THE COUNTY COUNSEL  
COUNTY OF ORANGE**

333 W. SANTA ANA BLVD., SUITE 407  
SANTA ANA, CA 92701  
MAILING ADDRESS: P.O. BOX 1379  
SANTA ANA, CA 92702-1379  
(714) 834-3300  
FAX: (714) 834-2359

Leon J. Page  
County Counsel  
(714) 834-3303

E-Mail:  
Leon.page@coco.ocgov.com

April 18, 2022

Members of the Board of Supervisors  
County of Orange  
333 West Santa Ana Boulevard  
Santa Ana, California 92701

Members of the Board of Directors  
Orange County Housing Finance Trust  
1 League #62335  
Irvine, California 92602

Re: Notification of Potential Conflict in Representation in Orange County Housing  
Finance Trust Affordable Housing Financing Transactions

Dear Members of the Board of Supervisors and Members of the Board of Directors,

Pursuant to an attorney's ethical duty to advise a client of a potential or actual conflict of interest, I am sending you this letter. The purpose of this letter is to (1) advise you of a potential conflict of interest in my office's representation of you, and (2) provide you an opportunity to waive the conflict, if you wish, so that my office can continue to represent you in this matter. Our office represents the County of Orange, including its governing body the Orange County Board of Supervisors. It also provides legal services to the Orange County Housing Finance Trust (the "Trust") under a services agreement the Trust has with the County.

The Trust has recently commenced awarding loan funds to various affordable housing projects for which the County has also awarded funds. Accordingly, a potential conflict in representation exists between the Trust and the County as they negotiate their various necessary documents to fund the loans on the affordable housing projects they support. Specifically, the potential conflict involves negotiations between the parties as it concerns subordination agreements. Subordination agreements address the rights and abilities of parties to recover their loaned funds should a project experience a foreclosure action. The negotiation of these agreements between the Trust and the County presents a potential conflict in representation where the same attorney provides legal services to both parties. Moreover, representation of the Trust on matters where the funding has come from the County pursuant to agreement presents a potential conflict of representation because the County department administering the funding is advised by the same attorney providing legal services to Trust.

Absent a conflict waiver from both the County and the Trust, my office will need to withdraw from representing the Trust in all affordable housing transactions and the Trust will be required to retain separate legal counsel to represent their interests in affordable housing financing transactions.

As a result of the potential conflict, I have established an “ethical wall” around the attorneys assigned to represent the County, on the one side, and the Trust, on the other. Senior Deputy Jacqueline Guzman (supervised by Supervising Attorney Mark Servino and Chief Assistant James Harman) has been assigned to provide advice on the matter to the County. Supervising Attorney Lauren Kramer and Deputy Ray Diaz (supervised by Senior Assistant Nicole Walsh) have been assigned to represent the Trust. These attorneys will have equivalent levels of legal and administrative support. They are each fully capable and committed to advocating zealously for their assigned offices. Neither set of attorneys will have access to the electronic files and working papers of the other. Paper files will be marked in bold red letters with the names of the attorneys and support staff who are on the assigned team. Each attorney team will be assigned different support staff.

My office’s conduct is governed by the California State Bar Rules of Professional Conduct. When such a potential conflict is recognized by an attorney, the California State Bar Rules of Professional Conduct, Rule 1.7<sup>1</sup>, requires the attorney to fully inform the client and allow the client to choose whether to waive the conflict or seek new counsel. If both the County and the Trust choose to waive the conflict, a written consent and acknowledgement of the potential conflict will be required.

#### Conflicts of Interest and Public Law Offices

A subset of conflict-of-interest cases has developed in relation to public law offices such as the Office of County Counsel. These cases recognize that different factors should be applied in determining whether a conflict exists in relation to a simultaneous or successive representation of public entity clients. The different factors applied to public and private law offices derive from public policy, and the need to avoid the waste of taxpayer funds.

Summarizing some of these considerations, the court . . . explained:  
‘Unlike their private sector counterparts, public sector lawyers do not have a financial interest in the matters on which they work. As a result, they may have less, if any, incentive to breach client confidences. [Citation.] Public sector lawyers also do not recruit clients or accept fees. As a result, they have no financial incentive to favor one client over another. [Citation.] [il] . . . [V]icarious disqualification in the public sector context imposes different burdens on the affected public entities, lawyers and clients. Most frequently cited is the difficulty public law offices would have in recruiting

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<sup>1</sup> Rule 1.7 of the Rules of Professional Conduct states:

- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer’s representation of the client will be materially limited by the lawyer’s responsibilities to or relationships with another client, a former client or a third person, or by the lawyer’s own interests.

competent lawyers. . . . Disqualification increases costs for public entities just as it does for private sector litigants. When a public entity is involved, these higher costs raise the possibility that litigation decisions will be driven by financial considerations rather than by the public interest. [Citation.]’ (*Santa Barbara, supra*, 122 Cal.App.4th at pp. 24-25.) . . . ‘In light of these considerations, courts have more readily accepted the use of screening procedures or ethical walls as an alternative to vicarious disqualification in cases involving public law offices.’ (*Id.* at p. 25.) As [another] court put it, ‘in the public sector, in light of the somewhat lessened potential for conflicts of interest and the high public price paid for disqualifying whole offices of government-funded attorneys, use of internal screening procedures or ‘ethical walls’ to avoid conflicts within government offices . . . have been permitted. [Citations.]’ (*Christian, supra*, 41 Cal.App.4th at p. 998.) *Charlisse C.* (2008) 45 Cal. 4th 145, 163.

With regard to the “ethical wall” solution to potential conflicts of interest, “courts have looked to whether the public law office has adequately protected, and will continue to adequately protect, the client’s confidences through timely, appropriate, and effective screening measures and/or structural safeguards.” *Charlisse C.* at 162. See also *William Jefferson & Co., Inc. v. Board of Assessment and Appeals No. 3 ex rel. Orange County* (9th Cir. 2012) 695 F.3d 960, 966 (“As long as the county counsel’s office maintains an ethical wall that prevents attorneys representing the Assessor from supervising attorneys who advise the Board or sharing case information with them, the county counsel’s dual representation does not undermine the [Assessment] Board’s impartiality.”)

As stated in the beginning of this letter, I am advising you of the conflict of interest that has arisen in this office’s concurrent representation of the County and the Trust in affordable housing transactions. I am obligated to advise you of this conflict pursuant to Rules of Professional Conduct, Rule 1.7. You may consent in writing to the dual representation through the use of an ethical wall as described herein.

Very truly yours,

LEON J. PAGE  
COUNTY COUNSEL

By Leon J. Page  
Leon J. Page

Digitally signed by Leon J. Page  
DN: cn=Leon J. Page, o=County of Orange,  
ou=County Counsel,  
email=leon.page@coco.ocgov.com, c=US  
Date: 2022.04.18 12:06:36 -07'00'



Members of the Board of Supervisors  
Members of the Board of Directors  
Page 4

I have read and understand the conflict of interest issues described above and hereby consent to the representation by the County Counsel's office utilizing an ethical wall as described.

**COUNTY OF ORANGE**

\_\_\_\_\_  
Doug Chaffee, Chairman of the Board of Supervisors

Dated: \_\_\_\_\_, 2022

**ORANGE COUNTY HOUSING TRUST**

\_\_\_\_\_  
Doug Chaffee, Chairman of the Board of Directors

Dated: \_\_\_\_\_, 2022