



NOV 16 2009

Memorandum by City Manager's Office

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko
Scott P. Johnson

SUBJECT: SEE BELOW

DATE: November 12, 2009

Approved

Date

11-16-09

COUNCIL DISTRICT: Citywide

INFORMATION

SUBJECT: REPORT ON ACTIVITIES UNDERTAKEN BY THE DIRECTOR OF HOUSING AND THE DIRECTOR OF FINANCE UNDER THE CITY COUNCIL'S DELEGATION OF AUTHORITY FOR THE PERIOD OF JULY 1, 2009 THROUGH SEPTEMBER 30, 2009

EXECUTIVE SUMMARY

This Memorandum details actions taken under the City Council's delegation of authority to the Director of Housing and the Director of Finance for the first quarter of Fiscal Year 2009-2010. During this quarter, the Director of Housing approved: Modifications to five existing loans, business terms to two loans, fifty-four (54) new rehabilitation loans and grants totaling \$819,210, Housing Trust Fund Grants totaling \$125,000, one hundred forty-six (146) homebuyer loans totaling \$5,867,194 as updated at month-end, and one Predevelopment Loan. The Director of Finance also conducted a Tax Equity and Fiscal Responsibility Act ("TEFRA") hearings on the issuance of tax-exempt multi-family housing revenue bonds for the Orvieto Family Apartments.

BACKGROUND

On September 4, 1990, the City Council adopted Ordinance No. 23589 which delegated to the Director of Housing certain specified authorities in the administration of the City's comprehensive affordable housing program (the "Delegation of Authority" or "DOA"). On May 23, 2000, the Delegation of Authority was amended by Ordinance No. 26127 to clarify certain sections and add several other provisions. On June 25, 2002, the Delegation of Authority was further amended by Ordinance No. 26657 to add several provisions delegating additional authority to the Director of Housing, the Director of Finance, and the City Manager. Subsequently, the City Manager delegated to the Director of Housing the contract authority granted to the City Manager. Effective July 26, 2007, the Delegation of Authority was further amended by Ordinance No. 28067 to modify certain provisions in order to streamline the Housing Department's process of making and adjusting loans and grants.

The Delegation of Authority is codified in Chapter 5.06 of the Municipal Code. This Memorandum reports on activities undertaken pursuant to the Administration's delegated authority for the period of July 1, 2009 through September 30, 2009.

ANALYSIS

The Delegation of Authority ordinance authorizes the Director of Housing: to develop and implement additional guidelines for housing programs; to adjust terms on housing loans and grants; to change the funding sources of a loan; to convert loans to grants; to loan or to grant Housing and Homeless funds, Predevelopment funds, and Housing Rehabilitation Program funds; to negotiate and to execute grant agreements necessary to implement Council-approved programs adopted in the Annual Action Plan of the Consolidated Plan; to provide management for, and/or dispose of, properties acquired through direct purchase, foreclosure or deed-in-lieu proceedings; to formalize the City Council's policies and procedures regarding housing loan defaults; to apply for federal or State funding; to determine, within defined parameters, various terms and conditions of loans and grants previously approved by the City Council; to make adjustments, within defined parameters, to loans and grants previously approved by the City Council; and to make other technical changes.

Further, the DOA Ordinance delegates jointly to the Director of Housing and Director of Finance certain authority related to the City's issuance of tax-exempt, private activity bonds to finance the development of affordable housing projects. The DOA Ordinance also delegates to the Director of Finance the authority to hold TEFRA hearings on the City's proposed issuance of tax-exempt bonds to finance affordable housing projects.

ACTIONS TAKEN BY THE DIRECTOR OF HOUSING AND THE DIRECTOR OF FINANCE

Under the parameters of the Delegation of Authority, the Director of Housing and the Director of Finance have taken the following actions during the period of July 1, 2009 through September 30, 2009.

Modifications to Council-approved Loan Terms & Conditions

Delmas Park Apartments – District: 3 – SNI: Delmas Park and University

On October 1, 2004, the City Council made a construction and permanent loan in the amount of up to \$7,196,210 to Delmas Park Associates, L.P. ("City Loan") for the 123-unit Delmas Park Apartments affordable housing project. In addition to the City Loan, the City made a \$2,800,000 grant to subsidize the acquisition of 26 extremely low-income units and a loan of \$185,912 to the non-profit general partner ("EHC") to further finance the development of the property. The City issued multifamily housing revenue bonds in the amount of up to \$19,379,000 to finance the construction of the project.

In 2007, the City Loan, the Senior Loan from Centerline Capital Group ("Centerline") in the final amount of \$13,780,000, and other loans on the property converted to the permanent period.

As a covenant of the Centerline Senior Loan, the project is required to maintain a 1.1:1 debt service coverage (DSC) or be required to make a paydown. The project failed to maintain the required DSC for each month during the six-month period of November 1, 2008 through April 30, 2009. Therefore, Centerline requested a \$500,000 paydown of its Senior Loan. This amount was determined by Centerline from its review of the project's financial results from the previously identified six-month period, applying a 1.1:1 DSC to the Net Operating Income figure, and sizing the Centerline's permanent loan amount based upon its interest rate.

Since the project does not have sufficient sources to pay for the required \$500,000, the Borrower has requested that the City increase the City loan by the amount of \$166,667. The remaining \$333,333 shall be funded by the Borrower and its limited partner investor and shall not require repayment. The \$500,000 shall be credited to partial redemption of the bonds in conformance with the bond loan documents and it will reduce the current balance of the Senior Loan from \$13,603,000 to \$13,103,468 and most importantly, remedy the default in advance on the Senior Loan as well as the other project loans. In addition, the current mortgage payments to the Senior Loan will be reduced by an estimated amount of \$35,964 annually that will eventually generate additional cash flow to pay the City Loan.

On July 20, 2009, the Director of Housing approved the increase to the City Loan in the amount of \$166,667 which resulted in a total City loan amount of \$7,362,877.

Approval of a Write Off of a Housing Rehabilitation Z-Loan:

On October 27, 1999, the Housing Rehabilitation Program received an application from an extremely low-income homeowner, Isaac Quiñonez, for the rehabilitation of his single family residence located at 2867 Garden Avenue. A pre-development advance in the amount of \$7,500 was approved to initiate emergency repairs. The intent was for the advance to be rolled into the permanent loan.

On February 11, 2000, a notice to proceed was issued and the work was completed, evidenced by a Notice of Completion issued on April 21, 2000. The contractor was compensated with an initial payment of \$3,750 on April 14, 2000 and final payment of \$3,750 on May 24, 2000 for a total pre-dev disbursement of \$7,500.

While this transaction is recorded as a loan in the City's financial system, a search of the County Recorder's on-line records show that no Deed of Trust was ever recorded on the Quiñonez property by the City; therefore no lien actually exists on this property.

Mr. Quiñonez passed away and the Successor Trustee of the trust sold the property on October 16, 2006. A notice of default was filed on April 15, 2009 by the current owner's lender and the property is now in foreclosure. Staff determined that there are no reasonable means of collection available and this loan is therefore an uncollectible debt.

On August 10, 2009, the Director of Housing approved a write off of the Housing Rehabilitation Loan #Z-99-038 in the amount of \$7,500.

Approval of a Temporary Hardship Waiver of Affordability Restrictions Allowing Temporary Rental of the Subject Property for a 12-Month Period:

On October 21, 2005, the City made two loans totaling \$90,000 to Myra C. Rountree for the purpose of financing the acquisition of the property located at 2177 Alum Rock Avenue #612, one of the units at Las Mariposas Development. In addition to the City loans, the Borrower secured additional funding for the purchase of the property from CalHFA, CalHFA HICAP, CalHFA CHDAP, and Housing Trust of Santa Clara Valley.

On July 13, 2009, the City received a written request from the Borrower allowing her to rent the property due to her loss of employment as a teacher from the San José Unified School District for the 2009-2010 school year. Ms. Rountree has accepted employment with a private company in Sonoma County where she will relocate.

Renting the property will enable the Borrower to cover the mortgage payments, property insurance, and property taxes until the market allows her to sell. The Borrower has provided documentation of the loss of employment along with a job offer from the private company in Sonoma County.

In the current housing market, the Borrower is unlikely to sell the property for enough funds to pay the senior loan, the full amount of the City loans and all of the other lender's loans. Denying the request to rent the property would force her into a position of short sale or foreclosure.

Throughout the rental period, the Borrower will be required to provide a lease agreement, monthly mortgage statements to ensure that the senior loan is current and evidence that she is making her best effort to sell the property. At the 12-month period, the Borrower may apply for an additional 12-month extension.

Staff recommended that the Director of Housing authorize the Borrower to rent the subject property at market rate for a maximum period of 24 months. This plan will protect the City's investment and provide the Borrower the opportunity to return to the property if there is a change in her circumstances. On July 21, 2009, the Director of Housing approved a temporary hardship waiver allowing the rental of subject property.

Approval of an Assumption of a Deferred Housing Rehabilitation Loan:

On June 28, 2000, the City of San Jose made a 3.0% deferred, Housing Rehabilitation Loan to Rose E. Provenzano in the amount of \$95,850 for the rehabilitation of her single-family residence located at 179 North 24th Street. With the passing of Mrs. Provenzano, the property transferred to her daughter, Stephanie M. Blevins, who has since transferred the property into her living trust. A review of Mr. and Mrs. Blevins financials confirm continued deferment eligibility.

On September 18, 2009, the Director of Housing approved the assumption of the Housing Rehabilitation Loan in the principal amount of \$95,850 together with accrued unpaid interest and allowed an extension of the deferred payment status of the loan for an additional five years at which time a financial review will be performed to determine deferral continuation eligibility.

Approval of an Assumption of a Deferred Housing Rehabilitation Loan:

On February 4, 1980, the City of San José made a deferred Housing Rehabilitation Loan to Lillian Bautista in the amount of \$27,000 for the rehabilitation of her single-family residence located at 2428 Summer Street. With the passing of Mrs. Bautista, the property transferred to her husband, John M. Bautista, who is also now deceased. The property transferred in equal shares to the heirs—the Bautista's nine adult children. Two of the heirs, Mark and Randy Bautista, reside in the subject property as their primary residence. Staff reviewed the Bautista Brothers' financials and determined they are eligible for the City's programs as well as the deferment continuation.

On September 21, 2009, the Director of Housing approved the assumption of the Housing Rehabilitation Loan in the principal amount of \$27,000; and allowed an extension of the deferred payment status of the loan for an additional five years at which time a financial review will be performed to determine deferral continuation eligibility.

Loans/Grants Terms and Conditions

Casa Feliz, L.P., a California limited partnership – District: 3 – SNI: University

On August 15, 2006, the City Council approved up to \$1,000,000 for construction and permanent financing for the development of Casa Feliz, a 60-unit three- and four-story affordable housing project.

On February 23, 2007, the Director of Housing approved the business terms for the construction and permanent loan. The loan provided for a 26-month term maturing June 15, 2009 with simple interest at the rate of 3% per annum. First Community Housing (FCH) was unable to meet the projected conversion to permanent loan date of June 15, 2009.

On June 23, 2009, the Director of Housing approved the request to extend the maturity date for the \$1,000,000 construction loan to Casa Feliz, L.P. from June 15, 2009 to December 1, 2009. As consideration for the loan maturity extension, five years of additional affordability was added to the 55-year affordability and an amendment subsequently recorded at that time, bringing the total years of affordability restriction to 60 years.

On September 15, 2009, the Director of Housing approved the business terms for up to \$170,074 loan increase to an approved permanent loan of \$1,000,000 to Casa Feliz, L.P., for the development of the new Casa Feliz. As consideration for the loan increase, capitalization of the construction loan interest, and extension of the maturity of the loan to comply with HCD requirements, the Affordability Restrictions will be revised to provide deeper affordability

consistent with HCD regulatory requirements. The restrictions' term will revert to 55 years. The approved loan terms are as follows:

Terms/Permanent Loan Increase	
Loan Increase Amount:	\$170,074
Interest Rate:	3.00%
Loan Term:	55 years
Repayment:	City will share on a pro-rata basis 50% of the net cash flow together with MHP and SUHRP loans per State regulations.
Total Affordable Units:	60 Units restricted as follows: 21 units @ 20% AMI, 31 units @ 30% AMI, 7 units @ 35% AMI, 1 unit @ 80% AMI
Affordability Term:	55 Years.

Brookwood Terrace Fam. Apts., L.P. – District: 3 – SNI: Five Wounds/Brookwood Terrace

On May 19, 2009, the City Council approved a funding commitment of up to \$500,000 for predevelopment and \$10,893,000 for construction/permanent financing for the development of the Project to ROEM Development Corporation (“ROEM”) or a related entity.

On March 3, 2009, the City Council approved a funding commitment of up to \$5,200,000 for the land acquisition. On March 26, 2009, the City closed a \$4,600,000 land acquisition loan to the Borrower.

On July 2, 2009, the Director of Housing approved the business terms for the \$500,000 Predevelopment Loan to Brookwood Terrace Family Apartments. The approved business terms are as follows:

Terms/Predevelopment Loan	
Loan Amount:	\$500,000
Interest Rate:	4.00% Simple interest.
Loan Term:	Maturity date is March 30, 2010 consistent with the land acquisition loan term.
Repayment:	Principal and Interest due at maturity.
Total Affordable Units:	84 one-, two-, and three-bedroom units—21 units restricted @ 30% AMI, 13 units @ 45% AMI, 49 @ 50% AMI and 1 unrestricted manager's unit.
Affordability Term:	55 Years.

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Housing Trust Fund Grants

During the period of July 1, 2009 through September 30, 2009, the Director of Housing approved the following grants:

Agency Name	Project Name	Funded Amount	Approval Date	Project Description
Loaves and Fishes	Relocation Support	\$75,000	6/01/2009	Loaves & Fishes moved its "soup kitchen" location from St. Patrick's Church, 389 E. Santa Clara St. to Montgomery Street Inn at 389 N. Montgomery Street in San José. Loaves & Fishes will continue serving hot nutritious meals to homeless, low-income and very low-income families, seniors and single people in need 3 days a week. At this new location, clients have greater access to Case Worker. Shelter beds, medical assistance and computers. Meals will be at 4:30 p.m. On site and with additional meal for shelter guests that eat at 6:30 p.m.
Emergency Housing Consortium/ Lifebuilders	Auto Repair Assistance Program	\$75,000	7/1/2009	The Auto Repair Assistance program (ARAP) provides emergency Auto Repair Assistance to qualified low-income and extremely low-income families and individuals to either facilitate their job search and job training, or to assist them in maintaining their current employment. Funding for the program consists of: On March 20, 2007, the City Council accepted a \$75,000 grant from the Metropolitan Transportation Commission (MTC) to help fund this program. The MTC grant requires a matching contribution from the City.
TOTAL:		\$150,000		

Housing Rehabilitation and Improvement Loans and Grants:

During this quarter, the Director of Housing approved the following Loans and Grants:

ACTIVITY	NUMBER	AMOUNT
REHABILITATION LOANS	7	\$200,000
REHABILITATION GRANTS	47	\$619,210
ENERGY GRANTS (stand-alone)	0	0
TOTAL:	54	\$819,210

Total Homebuyer Loans made this period:

During this quarter, the following loans closed through the homebuyer program:

ACTIVITY	NUMBER	AMOUNT
Teacher Housing Program	15	\$700,000
SJ State University Faculty and Staff Homebuyer Program	1	\$60,000
Inclusionary Loans	12	\$360,600
Other Project Loans (Including NOFA)	65	\$2,704,220
a) Other—including In-Lieu	0	\$0.00
b) Other—including HOME	0	\$534,000
BEGIN Loan Program	21	\$664,000
Welcome Home Loan Program	28	\$684,374
American Dream Downpayment Initiative Loan Program	0	\$0.00
Developer Discount Loans	0	\$0.00
HOME—HOME Venture (NHSSV)	4	\$160,000
TOTAL:	146	\$5,867,194

Predevelopment Loans

On May 12, 2009, the Housing Department received a Predevelopment Loan Application associated with the property known as 163 Baypointe Parkway from EAH, Inc., a California nonprofit corporation.

The property is preliminary planned for a 183-unit affordable rental family apartment project containing 1-, 2-, and 3-bedroom units with 37 units affordable at 25% of Area Median Income ("AMI"), 36 units affordable at 30% of AMI, and 110 units including 2 managers' units, located at 163 Baypointe Parkway, San José.

On August 10, 2009, the Director of Housing approved the business terms for the \$100,000 predevelopment loan to EAH, Inc. as follows:

Terms/Predevelopment Loan	
Loan Amount:	\$100,000
Interest Rate:	4.00% Simple interest.
Loan Term:	The earlier of 24 months, close of escrow of the purchase of the property, or cancellation of the purchase and sale agreement.
Repayment:	Principal and Interest due at the earlier of maturity, close of escrow of the purchase of the property, or cancellation of the purchase and sale agreement.
Total Affordable Units:	163 proposed units containing one-, two-, and three-bedroom units—37 units restricted @ 25% AMI, 36 units @ 30% AMI, 110 including 2 managers' units @ 60% AMI.
Affordability Term:	55 Years.

TEFRA Hearings

The Director of Finance held a second TEFRA Hearing for the Orvieto Family Apartments on July 6, 2009 to notify the public of the City of San José's ("City") intent to issue tax-exempt multifamily housing revenue bonds in an amount not to exceed \$16,500,000. A public hearing was previously held by the City's Director of Finance on December 9, 2008, regarding the issuance of the Bonds for Orvieto Family Apartments. The subsequent public hearing and notice reflected a new Owner/Operator of the proposed Project. The bonds for this project will finance the costs of acquisition and construction of the development.

Project Name	Units	Location	Bond Amount	Mayor's Certificate No.
Orvieto Family Apartments	92 Units	Southwest corner of Montecito Vista Drive and Goble Lane, San José, CA	\$16,500,000	Certificate No. 2009-6 Adopted.

The public had the opportunity to comment on the project during the TEFRA hearing. Notice for the meeting was published at least fifteen (15) days prior to the hearing date.

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COORDINATION

Preparation of this report has been coordinated with the City Attorney's Office.


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