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Memorandum by City Manager's Office

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko  
Scott P. Johnson

SUBJECT: SEE BELOW

DATE: February 20, 2009

Approved

Date

2-21-09

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 OCTOBER 1, 2008 THROUGH DECEMBER 31, 2008**

**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 second quarter of Fiscal Year 2008-2009. During this quarter, the Director of Housing approved: modifications to four existing loans; ninety-one (91) new rehabilitation loans and grants totaling \$1,654,665; and one hundred forty-two (142) homebuyer loans totaling \$7,056,835. The Director of Finance also conducted two Tax Equity and Fiscal Responsibility Act ("TEFRA") hearings on the issuance of tax-exempt multi-family housing revenue bonds for four developments.

**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 October 1, 2008 through December 31, 2008.

### **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 October 1, 2008 through December 31, 2008.

#### **Modifications to Council-approved Loan Terms & Conditions**

##### **Conversion of a Rental Affordability Restriction to an Equity-Share Restriction:**

On February 21, 1996, the Housing Department made a rehabilitation loan using CDBG funds in the amount of \$60,383.30 to Ms. Edna Washington for improvements to her single-family rental property located at 509 Ella Drive. A 30-year affordability restriction with no buy-out provision was recorded on the property, restricting the occupancy of the property to low-income tenants because the loan amount exceeded 25% of the median-priced single-family home in San José at that time.

Ms. Washington paid the City Loan in full on January 10, 2006. Due to financial difficulties and possible foreclosure from the current senior lender, Ms. Washington wishes to dispose of the

property. When rehabilitation loans are funded by the Low and Moderate Income Housing Fund (20% Fund), the loan is known as "substantial" and is subjected to affordability restrictions requirement.

Affordability restrictions governed by State Law provide for an equity-share buyout only for owner-occupied properties in exchange for removing the restriction. Affordability restrictions on rental property do not include an equity-share buyout provision. The only way that a rental restriction can be removed is through the cumbersome and complicated process of transferring the restriction to another property. Although the subject loan to Ms. Washington was funded by CDBG funds, the restrictions applied are as required for 20% Funds. Trying to restrict the sale of a single-family home to a new landlord who can only rent to income-qualified low-income tenants would involve far more cost and effort on the part of staff than it is worth to maintain a single rental unit. Therefore, staff recommended conversion of the subject affordability restriction to an equity-share restriction.

On December 15, 2008, the Director of Housing approved the conversion of the affordability restriction from a rental restriction without an equity-share buyout provision to an equity-share buyout provision.

**Approval to Subordinate to a New Senior Lien to allow an Interest Rate Swap and a Supplemental Loan for Almaden Family Apartments – District: 7 – SNI: N/A:**

On October 28, 2003, the City Council authorized the issuance of City of San José Variable Rate Demand Multifamily Housing Revenue Bonds in the amount of \$31.3 million. The proceeds of the Senior Bonds were used for the acquisition and construction of 225 family rental units known as Almaden Family Apartments. Also on October 28, 2003, the City Council authorized the issuance of subordinate tax-exempt refunding bonds in the amount of up to \$5.0 million and approved related documents. On November 20, 2007, at the request of the Developer, the City Council approved a \$2.0 million increase in the amount of subordinate bonds to accomplish conversion of the project financing from the Construction phase to the Permanent phase. Additionally, the City Council approved a transfer of the approved private placement purchaser of the subordinate bonds, a newly –formed development company formed by Mike Costa and former principals of Simpson Housing, "Housing Partners".

During construction, the City agreed to subordinate the lien position to a total of no more than \$31,300,000, but that agreement did not include the additional new liens totaling \$5,239,800. The City's recorded lien position would now be junior to the "A" bonds and the two new liens for a total new lien in the amount of \$30,154,800. While the amount is lower than the original amount of \$31.3 million the level of subordination was not anticipated for the permanent phase.

On December 2, 2008, the Director of Housing approved the following actions:

- 1) To subordinate to a new senior lien of \$2,989,800 in order to allow the origination of an interest rate swap ("Swap") with Deutsche Bank for a 14-year term, which will swap the

project's tax-exempt senior ("A") bonds floating rate to a fixed rate of approximately 5.47%. Maximum Supplemental Loan and Interest Rates allowable.

- 2) To subordinate to a new \$2,250,000 Deed of Trust securing a new Fannie Mae Supplemental Loan, which will enable the same amount of subordinate ("B") bonds debt to convert to a bond debt and be enhanced by Fannie Mae ("FNMA"). Maximum Supplemental Loan and Interest Rates Allowable.

All other terms and conditions remain unchanged.

**Approval to Subordinate the City Loan to the New Senior Loan for Le Mirador aka Coleman Senior Apartments:**

In April 1998, the Housing Department made a construction and permanent loan of 20% Funds in the amount of \$3,525,000 to Coleman Road Associates, L.P., for the development of the Coleman Apartments, a 141-unit project available to very low-income senior households. In addition to the City Loan, the City issued its Multi-Family Housing Revenue Bonds in the principal amount of \$8,050,000. The project was also awarded \$3,157,000 in tax credits from the State of California Tax Credit Allocation Committee, syndicated by Muni Mae as the tax credit investor (also the senior lender).

On December 11, 2008, the Director of Housing approved to subordinate the City Loan to a new senior loan from Muni Mae in the amount of \$7,800,000 so long as the combined loan-to-value (LTV) does not exceed 100% and to accept a City Loan partial paydown of \$200,000.00.

All other terms and conditions on the City Loan remain unchanged.

**Decrease the Downpayment Assistance amounts at Vista at San Carlos – District: 6 – SNI: Burbank/Del Monte:**

On March 20, 2007, the City Council approved the construction loan that included \$1,600,000 to fund second mortgages for 16 Moderate-Income Homebuyers for the West San Carlos Affordable Housing project, Vista at San Carlos, located at 1523 West San Carlos Street. Along with the construction loan, the City Council approved the recommendation to increase the per-unit second-mortgage assistance amounts from \$50,000 to \$100,000 per affordable unit. The additional subsidy lowered the buyer's loan amount to a level of affordability necessary to retain eligibility for \$510,000 in State BEGIN Funds that had been awarded to the project.

Given the original sales price projections, it was originally thought that an increase in the per-unit subsidy to the homebuyer of \$50,000 per unit would be needed to enable moderate-income homebuyers to purchase the units. The increase would have the side benefit of helping the developer repay both the senior lender's and the City's construction loans. However, the weakness of the current housing market and the reduction in the project's sales price has resulted in increased affordability to moderate-income homebuyers. The previously approved \$100,000 per-unit subsidy is no longer needed to reach the targeted income group. Staff has met with

CORE and ROEM, the project's partners, and agreed that \$80,000 is a reasonable target amount for second mortgages on the project's 16 affordable units.

A 20% reduction in the per-unit subsidy will cause the City to forego \$320,000 of long-term notes remaining in the project in the form of individual second mortgages and instead allow the developer to apply a higher amount of proceeds from each individual sale to be used to repay the first construction lender. While the reduction in sales prices benefits buyers, and reduces the City's long-term soft second homebuyer mortgage obligation, it damages planned loan repayment.

On October 21, 2008, the Director of Housing approved a decrease in the downpayment assistance amounts from \$100,000 to \$80,000 per unit for up to sixteen affordable for-sale units at Vista at San Carlos Development.

**Loans/Grants Terms and Conditions**

**McCreery Courtyards – District: 5 – SNI: Mayfair**

On September 30, 2008, the City Council approved a funding commitment of up to \$7,900,000 to Pacific West Communities or its designated affiliate, for the acquisition, construction, and permanent financing of the 93-unit McCreery Courtyards, an affordable multifamily rental project located on McCreery Avenue south of Alum Rock Avenue, to be made available to extremely low-income (ELI) and very low-income (VLI) households.

On November 5, 2008, the Director of Housing approved the specific business terms for the acquisition, construction, and permanent loan to Pacific West Communities. The loan-business terms are as follows:

<b>Loan Terms Acquisition/Construction and Permanent Loan</b>	
Loan Amount:	\$7,900,000
Interest Rate:	4.00% Simple
Loan Term:	420 Months
Repayment:	Annual payments of 50% Residual Receipts
Total Affordable Units:	Total 92 rental units plus 1 unrestricted manager's unit.
Affordability Term:	55 Years

**90 Archer Street – DISTRICT: 3 – SNI: Rincon de los Esteros**

On December 9, 2008, the City Council approved a funding commitment of up to \$4,580,000 to Charities Housing Development Corporation or its designated affiliate, for the acquisition, construction, and permanent financing of the 42-unit housing development, an affordable

multifamily rental project located at 90 Archer Street, to be made available to extremely low-income (ELI) and very low-income (VLI) households.

On December 17, 2008, the Director of Housing approved the specific business terms for the acquisition, construction, and permanent loan to Charities Housing Development Corporation. The loan-business terms are as follows:

<b>Loan Terms Acquisition Loan</b>	
Loan Amount:	\$4,580,000
Interest Rate:	4.00% Simple
Loan Term:	24 Months
Repayment:	Principal and Interest at Maturity
Total Affordable Units:	Total 41 rental units plus 1 unrestricted manager's unit.
Affordability Term:	55 Years

**Hillsdale Townhouses – DISTRICT: 9 – SNI: N/A**

On September 18, 2007, the City Council approved a funding commitment of up to \$4,275,000 to Mid-Peninsula Tyrella Corporation, Inc., for the rehabilitation of the 48-unit, Hillsdale Townhouses project. On September 30, 2008, the City Council approved an increase to the construction and permanent loan amount of up to \$725,000, for a total loan commitment of \$5,000,000.

On October 17, 2008, the Director of Housing approved the specific business terms for the construction and permanent loan to Mid-Peninsula Tyrella Corporation, Inc. or its designated affiliate. The loan-business terms are as follows:

<b>Loan Terms Construction and Permanent Loan</b>	
Loan Amount:	\$5,000,000
Interest Rate:	4.00% Simple
Loan Term:	up to 420 Months
Repayment:	Annual payments of 50% Residual Receipts
Total Affordable Units:	Total 48 rental townhome-units with one unrestricted manager's unit.
Affordability Term:	55 Years

**Housing Trust Fund Grants**

None to report this period.

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**Housing Rehabilitation and Improvement Loans and Grants:**

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

<b>ACTIVITY</b>	<b>NUMBER</b>	<b>AMOUNT</b>
REHABILITATION LOANS	5	\$345,000
REHABILITATION GRANTS	86	\$1,309,665
ENERGY GRANTS (stand-alone)	0	\$0
<b>TOTAL:</b>	<b>91</b>	<b>\$1,654,665</b>

**Total Homebuyer Loans made this period:**

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

<b>ACTIVITY</b>	<b>NUMBER</b>	<b>AMOUNT</b>
THP LOANS	17	\$945,000
SJSU FSHP	5	\$30,000
Inclusionary Loans	19	\$961,000
Other Project Loans (Including NOFA)	45	\$2,700,835
a) Other—including In-Lieu	0	\$0.00
b) Other—including HOME	-	\$510,000
BEGIN Loan Program	30	\$900,000
Welcome Home Loan Program	20	\$500,000
ADDI Loan Program	0	\$0.0
Developer Discount Loans	0	\$0.0
HOME—HOME Venture (NHSSV)	6	\$240,000
<b>TOTAL:</b>	<b>142</b>	<b>\$7,056,835</b>

**Predevelopment Loans**

None to report.

**TEFRA Hearings**

The Director of Finance held a TEFRA hearing for the McCreery Courtyards on November 12, 2008, and for the First and Rosemary Family Apartments, First and Rosemary Senior Housing, and Orvieto Family Apartments on December 9, 2008, 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 \$25,000,000, \$33,000,000, \$15,500,000, and \$16,500,000 respectively to finance the costs of acquisition and construction of the developments.

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Project Name	Units	Location	Bond Amount	Mayor's Certificate No.
McCreery Courtyards	93	1884 Alum Rock Ave., San Jose, CA 95116	\$25,000,000	Certificate No. 2008-4 Adopted.
First and Rosemary Family	184	1290 North First St., San José, CA 95112	\$33,000,000	Certificate No. 2008-5 Adopted.
First and Rosemary Senior Housing	106	1290 North First St., San José, CA 95112	\$15,500,000	Certificate No. 2008-6 Adopted.
Orvieto Family Apartments	92	Southwest Corner of Montecito Vista Dr., and Montecito Vista Way, San José, CA 95111	\$16,500,000	Certificate No. 2008-7 Adopted.

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

**COORDINATION**

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

  
SCOTT P. JOHNSON  
Director of Finance

  
LESLYE KRUTKO  
Director of Housing

For more information, contact Leslye Krutko, Director of Housing, at (408) 535-3851.