



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Leslye Corsiglia

**SUBJECT: PREDATORY LENDING ACTION  
PLAN**

**DATE:** May 10, 2004

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Approved

Date

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**COUNCIL DISTRICT:** Citywide

## **RECOMMENDATION**

It is recommended that the City Council:

1. Authorize the Housing Department to work with housing advocacy groups, the lending community, and San Jose's Financial Literacy Campaign to form a comprehensive anti-predatory lending program that includes counseling, outreach, and education.
2. Await decisions by the California Supreme Court, which is considering the constitutionality of the City of Oakland's predatory lending ordinance, and Congress, which is considering legislation that would restrict local actions relating to predatory lending, before taking any additional action on an ordinance or other measures.

## **BACKGROUND**

On September 16, 2003, in response to the findings of the Analysis of Impediments to Fair Housing Choice, the City Council directed staff to provide answers to questions related to predatory lending and support a predatory lending stakeholders group charged with providing a fair and balanced report to assist future decision making on the issue.

On November 25, 2003, the City Council approved the Predatory Lending Action Plan prepared by the Housing Department, which provides goals and timelines for the requested actions. Attachment A contains a comprehensive update to the questions raised by the City Council and described in the Action Plan.

The predatory lending stakeholder group is comprised of representatives from the following groups:

- ACORN
- AARP
- Law Foundation

- California Reinvestment Coalition
- Working Partnerships
- California Association of Mortgage Brokers
- Santa Clara County Association of Realtors
- American Financial Services Association
- Local Private Lenders

The stakeholders met nine times between October 2003 and April 2004. At the meetings, the members heard from representatives from organizations involved in anti-predatory lending efforts, including the cities of Oakland and Los Angeles, the local Fair Mortgage Terms Initiative, Sacramento's Financial Abuse Network, and East Palo Alto's EPA CAN DO.

### **ANALYSIS**

In addition to hearing from the representatives, the stakeholder group discussed concerns regarding predatory lending and possible remedies. The group had productive conversations about the insufficiencies of current data that quantifies predatory lending and possible alternative methods to gauge the extent of this practice. Additionally, the group debated whether the abusive lending practices the advocacy groups' clients had incurred were illegal and therefore already actionable under the law, or if additional legal remedies were needed. The stakeholders also began discussions on the proposed ordinance and the lender/realtor's solutions to predatory lending.

At its April 1st meeting, the group disbanded after it was clear that agreement on the extent of predatory lending and needed actions could not be achieved. As a result, the stakeholder members decided to prepare two separate reports to the City Council – one from the fair housing/advocate members and one from the realtor/lender members (Attachments B and C). These reports are included as submitted by each group; the Housing Department has not verified the accuracy of the statements in these reports.

In their report (see Attachment B), the Consumer and Fair Housing Advocates state that predatory lending afflicts too many households in San Jose and that the problem is increasing. They attest that current guards against predatory lending are insufficient to protect San Jose residents and propose that the City implement a comprehensive predatory lending program including a local ordinance.

The Lender/Realtors (see Attachment C) contend that San Jose may have cases of abusive lending practices, but neither an "inordinate" nor increasing amount. They also recommend that the City implement a comprehensive program but believe a local ordinance would kill desirable subprime loans. Instead, they support "proactive and reactive enforcement" of existing laws.

After hearing from the stakeholder members and conducting extensive research on predatory lending, the Housing Department recommends that the City implement a comprehensive anti-predatory lending program and await impending legal decisions before considering any further action.

A comprehensive outreach, education and counseling program will help provide San Jose residents with the knowledge and support to protect themselves from being victims of predatory lending practices. Because the members of the predatory lending stakeholder group agree that this type of program would be beneficial, there is currently the opportunity for such a program to be developed with input and involvement of all interested parties. In order to implement this program, the Housing Department, in coordination with the other stakeholders, will need to seek funding from outside sources.

Additionally, the Department will investigate potential collaboration opportunities with the new Financial Literacy Campaign. The campaign, a partnership with nonprofit organizations and lending and educational institutions, among others, seeks to educate low-income residents on the value of saving money and improving credit. By including a predatory lending component in the campaign, it may be possible to capitalize on existing resources, including a website, marketing materials, and educational workshops.

Any additional actions should await decisions currently being made at the State and Federal levels. Although we have concerns that current laws may not provide adequate protections for residents, absent these decisions it would be premature to take action.

The cities of Oakland and Los Angeles both passed ordinances to respond to concerns about predatory lending. Oakland's ordinance has been challenged by the American Financial Services Association and is currently not being implemented pending court action. The California Supreme Court is currently considering the validity of the Oakland ordinance; a decision is not expected until the Fall of 2004 at the earliest. Los Angeles' ordinance has been put on hold pending Supreme Court action on Oakland's ordinance.

At the federal level, Representative Nye has brought forward a predatory lending bill that, if passed, would preempt all state and local predatory lending laws.

### **PUBLIC OUTREACH**

Please see above discussion of the stakeholder meetings.

### **COORDINATION**

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

HONORABLE MAYOR AND CITY COUNCIL

**Subject: Predatory Lending Action Plan**

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**CEQA**

Not a project.

A handwritten signature in black ink, appearing to read 'Leslye Corsiglia', with a stylized, cursive script.

LESLYE CORSIGLIA  
Director of Housing

Attachments

- A – Predatory Lending – Questions and Answers
- B – Stakeholder Report from the Consumer and Fair Housing Advocates
- C – Stakeholder Report from the Lenders and Realtors