



COUNCIL AGENDA: 6/28/05

ITEM: 2.24

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Leslye Corsiglia  
Scott P. Johnson

**SUBJECT:** SEE BELOW

**DATE:** June 7, 2005

Approved

Date

June 15, 2005

**COUNCIL DISTRICT:** 7  
**SNI AREA:** N/A

**SUBJECT: SUBORDINATION OF THE CITY'S BOND REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS TO DEEDS OF TRUST EVIDENCING NEW BOND FINANCING RELATING TO THE TIMBERWOOD AFFORDABLE HOUSING PROJECT**

## RECOMMENDATION

It is recommended that the City Council adopt a resolution

- (a) Approving the subordination of the City's existing Bond Regulatory Agreement and Declaration of Restrictive Covenants to the new Bond Deed of Trust and the Letter of Credit Bank Deed of Trust;
- (b) Authorizing the City Manager or other authorized officer to execute and, as appropriate, to negotiate, execute and deliver all related documents as necessary.

## BACKGROUND

In 1990, the City issued \$14,925,000 of its Multifamily Housing Senior Revenue Bonds 1990 Series A & B to provide a loan to Mid Peninsula Seven Trees, Inc., an affiliate of Mid-Peninsula Housing Coalition ("Mid-Pen"), to partially subsidize the acquisition and rehabilitation of the Timberwood Apartments ("the Project"), a family rental project located at 3903 Seven Trees Boulevard. In consideration for the bond loan, 58 of the 286 units in the apartment complex were restricted to very low-income households pursuant to a bond regulatory agreement. At the present time, the outstanding principal amount of this bond loan is approximately \$11,605,000.

A condition for the issuance of the 1990 Series A & B Bonds was a letter of credit to ensure the timely payment of principal and interest due on the bonds. Wells Fargo, the letter of credit bank,

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required the Redevelopment Agency of the City of San José to fund an Affordability Reserve Fund to a maximum of \$1,500,000. The City then lent these funds to Mid-Pen. As permitted under the Loan Agreement, Mid-Pen used these funds as an operating and debt service reserve for the Project. The current outstanding balance of the Affordability Reserve Fund Loan is approximately \$618,889. This loan will be paid back to the City by Mid-Pen at the time of closing of the new bonds. Additionally, per the terms of the current Regulatory Agreement, prepayment of the bonds requires that the City receive a lump-sum payment of approximately \$48,579 at closing. This represents the present value of the annual bond administration fee that the City otherwise would receive over the remaining term of the existing bonds (15 years).

### ANALYSIS

Mid-Peninsula Housing Coalition has undertaken an effort to restructure the outstanding debt on many of its affordable housing developments in the Bay Area, including the Timberwood Apartments. Mid-Pen is in the process of refinancing the Project with a combination of new tax-exempt bonds and 4% low-income housing tax credits. The funds generated by the refinancing will be used to pay off the existing bonds in full and to fund rehabilitation work on the Project, which will include kitchens, bathrooms, carpeting, vinyl flooring and painting.

The new tax-exempt bonds will be issued by the Housing Authority of the County of Santa Clara ("HACSC") concurrently with tax-exempt bonds for the refinancing of other Mid-Pen projects elsewhere in Santa Clara County. The new bonds will pay off the \$10,425,000 outstanding balance on the existing 1990 Series A Bonds and the \$1,180,000 outstanding balance on the existing 1990 Series B Bonds.

As part of the issuance of the new bonds, Mid-Pen will pay off the amount outstanding under the Affordability Reserve Fund Agreement. The City's Regulatory Agreement, which requires that 58 units be restricted to very low-income households, will remain in effect but will be subordinate to the Deed of Trust evidencing the loan to the Project of the bond proceeds by the new issuer. The City's Regulatory Agreement will also be subordinate to the new Bond Deed of Trust.

Staff recommends that the Council approve the subordination because the affordability period of the existing Regulatory Agreement required by federal tax law (15 years) has expired on the Project. The new regulatory agreement to be recorded places even more restrictive affordability requirements on the Project for 55 years. This will result in affordability restrictions being extended for an additional 40 years beyond the existing regulatory agreement to 2060. Mid-Pen intends to restrict 100% of the units in the Project to Very Low-Income households through the Regulatory Agreement required by the California Tax Credit Allocation Committee. This will provide 228 newly restricted units to San Jose's affordable housing stock.

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**OUTCOME**

Approval of the recommended actions would allow the proposed refinancing structure to proceed, resulting in the repayment of the City's loan and pre-payment of the City's annual bond administration fee per the terms of the Regulatory Agreement, in the amount of approximately \$667,000. Additionally, 228 newly restricted units would be added to San Jose's affordable housing stock and the City's current outstanding bonds on the Project would be paid off.

**PUBLIC OUTREACH**

Not applicable.

**LEGAL ISSUES**

The City's Regulatory Agreement will remain in effect but will be subordinate to the Deed of Trust evidencing the loan by the new issuer of tax-exempt bonds. It will also be subordinate to the Deed of Trust evidencing the letter of credit obligations under the new issuer's Reimbursement Agreement and may be additionally subordinated as allowed by State law.

**COORDINATION**


Preparation of this memorandum was coordinated with the Office of the City Attorney and the Finance Department.

**COST IMPLICATIONS**

At the time of closing, the Housing Department will receive a payment of approximately \$667,000 to satisfy the City's outstanding loan and to prepay the City's annual bond administration fee.

**CEQA**

Not a project.

  
SCOTT P. JOHNSON  
Director of Finance

  
LESLYE CORSIGLIA  
Director of Housing