



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Leslye Krutko  
Director of Housing

**SUBJECT:** See Below

**DATE:** April 13, 2009

Approved

*Christine J. Shypp*

Date

*4/14/09*

**COUNCIL DISTRICT:** All

**SNI AREA:** All

**SUBJECT: NEW CONSTRUCTION SECOND MORTGAGE LOAN PROGRAM**

## RECOMMENDATION

It is recommended that the City Council:

1. Adopt a Resolution Authorizing the Director of Housing to reallocate up to \$4,483,700 in uncommitted Low- and Moderate-Income Housing Funds for homebuyers in eleven new construction for-sale projects to homebuyers in any new construction for-sale development in San José for a period of twelve months; and
2. Make findings that the use of Low- and Moderate-Income Housing Funds to provide loans to homebuyers in those housing projects that are outside a redevelopment project area benefits the Agency's redevelopment project areas; and
3. Authorize the Director of Housing to extend availability of the funds to homeowners in new developments for a period of up to twelve additional months.

## OUTCOME

Upon approval of this memo, the Housing Department will apply up to \$4,483,700 remaining from the Project-Based Second Mortgage Program to the New Construction Second Mortgage Program for low- and moderate- income first time homebuyers. This will make the remaining downpayment assistance available to homebuyers in any new for-sale housing development – provided the unit prices meet affordable purchase price requirements as approved by the Housing Department. This action will encourage the rapid utilization of City funds to help stimulate the local real estate market.

## **BACKGROUND**

On March 4, 2008, the City Council authorized the Department of Housing to publish a Notice of Funding Availability (NOFA) for a Project Specific Second Mortgage Program. The Program was established to provide second mortgage assistance loans to assist low- and moderate-income homebuyers purchase homes in specific development projects throughout the City. In April 2008, the Housing Department received eleven applications in response to the NOFA and \$10,000,000 was reserved for homebuyers in eleven new construction housing developments in San José.

The City's commitment to provide downpayment assistance funds for homebuyers in these eleven projects is set to expire April 25, 2009. The Housing Department has notified each builder, sales team, and its list of lenders that the individual per-project set-asides for homebuyer loans will expire, and that any remaining uncommitted funding may be reallocated.

Through the Project-Based Second Mortgage program, approximately \$4,886,300 has been used or committed to date to provide downpayment assistance loans to seventy six low- and moderate-income households. This figure includes fifteen households that are expected to close escrow by the end of April 2009. The use of these funds is summarized by project in **Attachment 1**.

## **ANALYSIS**

Over the last several months, the Housing Department has received several inquiries from homebuilders and developers for downpayment assistance funds for homebuyers in each of their respective developments. Some of these builders did not submit an application for homebuyer funds under the original NOFA. Under the terms of the current program, it is not possible to expand the list of eligible properties to include additional developments. In addition, some developers have been successful in utilizing their full funding commitments and have requested additional funds to help new homebuyers.

The Housing Department recommends making the unspent funds from the Project-Based Second Mortgage Program available to homebuyers in order to stimulate the local market for newly constructed projects. However, rather than continuing to limit the second mortgage funds to specific developments, the Housing Department is proposing to make these funds available to homebuyers at all new developments that are affordable to low- or moderate-income households.

By pooling the uncommitted funds from the previous NOFA into an over-the-counter program to assist homebuyers in all new housing developments in San José, homebuyers will have a greater number of new homes from which to choose. By doing so, the City will help to encourage the rapid utilization of the City funds in order to help stimulate the local real estate market. This recommendation to help incent the purchase of new construction for-sale housing units is also aligned with the goal of recently passed state legislation which authorizes up to \$10,000 in tax credits for first-time homebuyers who purchase a new home between March 2009 and March 2010.

The Housing Department will make these funds available for up to twelve months and reach out to builders, lenders, and local realtors to provide training on how to utilize the City's downpayment assistance program. The Department will publish a list of projects affordable to low- and moderate-income households on the [www.sjhousing.org](http://www.sjhousing.org) website as a means to inform homebuyers of opportunities in these developments.

The Housing Department will also work closely with Neighborhood Housing Services of Silicon Valley and local housing builders to promote and market the City's New Construction Second Mortgage Program. The Director of Housing may extend availability of the funds for an additional period of time if program demand and market conditions at that time warrant an extension.

The specific projects included in the project specific program that will expire on April 25 were provided advance notice of the program expiration and the Housing Department's recommendation. The Department will honor all sales contracts with homeowners in those developments that are ratified prior to the expiration date. The potential commitments in the pipeline (as identified in Attachment 1) total \$2,053,700. If these sales do not transpire, the funds will be applied to the uncommitted balance of \$2,430,000 – making the total potential funding of \$4,483,700 available for the New Construction Second Mortgage Loan Program. Future homeowners in developments that are part of the project specific program will still be eligible to utilize the unexpended funds on a first-come, first-serve basis, as long as unallocated funds remain in the pool.

#### Downtown High-Rise Second Mortgage Program

On April 7<sup>th</sup>, the City Council approved a separate pool of funds to assist low- and moderate-income homebuyers purchase a home in one of the four existing high-rise condominium developments in downtown San José. The funds for homebuyers in downtown high-rises will help to ensure that adequate funding for homebuyers in the downtown will be preserved. Encouraging the purchase of new units in targeted redevelopment project areas in downtown San José has been identified as a high priority for the City and the Redevelopment Agency.

The funding source for this program is also the unspent funds from the Project-Based Second Mortgage Program. Funds allocated for the High-Rise Program will be tracked separately and are not included in the \$4,483,700 potentially available for the New Construction Second Mortgage Program.

#### Loan Terms - New Construction Second Mortgage Program Loan

All of the terms of the Program will remain the same. Loans made under the program will serve households earning up to 120% of Area Median Income, adjusted for family-size. The maximum income limits for moderate income households are shown below:

Family Size	Maximum Household Income
1	\$88,600
2	\$101,300
3	\$113,900
4	\$126,600

Low- and moderate-income households are eligible to borrow up to \$50,000 to purchase a studio or one-bedroom unit, and up to \$60,000 for a two-bedroom unit or larger. Each homebuyer is required to sign a promissory note and deed of trust, and each assisted unit is subject to a 45-year recorded affordability restriction against the property in exchange for city financing. Each loan is underwritten and approved in conformance with the City's Homebuyer Program Underwriting Guidelines.

Legal Findings for use of 20% Low- and Moderate-Income Housing Funds outside of RDA project areas

The use of 20% Low and Moderate-Income Housing Funds outside of a redevelopment project area is a benefit to redevelopment project areas in San José. The provision of low- and moderate-income housing will help revitalize neighborhoods that are near or adjacent to redevelopment areas and generally assist efforts in redevelopment areas. Further, the use of 20% Housing Funds for affordable housing outside a redevelopment project area will be of benefit to redevelopment project areas because there is a need to encourage and assist housing of all income levels throughout the City.

**EVALUATION AND FOLLOW-UP**

The Housing Department will monitor and track the number of households assisted through the program and production data will be included in the Homebuyer Program Quarterly Report that is posted to the Housing Department website.

**POLICY ALTERNATIVES**

To arrive at this proposal, staff also considered the following option:

**Alternative #1:** *Do not re-allocate the remaining uncommitted NOFA funds to all new Developments within the City of San Jose.*

**Pros:** The City's Low- and Moderate-Income Housing funds may be used for alternate affordable projects such as gap financing for a multi-family rental housing development.

**Cons:** The overall for-sale housing market in San José has suffered steep declines in recent years. Developers of new construction for-sale housing projects continue to struggle to sell homes in this highly competitive market and

mortgage lenders continue to require large downpayments from prospective homebuyers.

**Reason for not Recommending** By encouraging homeownership at this time, the local housing market will be stimulated and newly vacant homes can more quickly be absorbed by low- and moderate-income first-time homebuyers. Furthermore, the downpayment assistance funds will help homebuyers take advantage of current market conditions which provide a unique opportunity to purchase a home at a very affordable price.

### **PUBLIC OUTREACH/INTEREST**

This action meets Public Outreach Criterion #1. This memo will be posted to the City Council Agenda for May 5, 2009, via the City's website. In addition, regional housing developers with new construction for-sale housing projects will be notified of this agenda item via a posting on the Department of Housing website at [www.sjhousing.org](http://www.sjhousing.org), and through the City's extensive list of developer partners, lenders, and real estate sales teams.



**Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.

**(Required: Website Posting)**



**Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**



**Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

### **COORDINATION**

Preparation of this memorandum has been coordinated with the Office of the City Attorney.

### **FISCAL/POLICY ALIGNMENT**

This recommendation is aligned with the most recent Council-adopted "Five Year Housing Investment Plan for FY 2007/2008 through FY 2011/2012", which sets forth a goal of providing financing for 553 new homebuyers over a five year period. This action is also consistent with the City's For-Sale Housing Policy, adopted in 1988, which authorizes a forward commitment of second mortgages to future residents in for-sale developments.

**COST SUMMARY/IMPLICATIONS**

1. **AMOUNT OF RECOMMENDATION:** \$4,483,700
2. **COST ELEMENTS OF CITY LOANS:**  
Up to 90 second mortgage loans at \$50,000 per household \$4,483,700
3. **TOTAL FUNDING** \$4,483,700
3. **SOURCE OF FUNDING:** Fund 443—Low- and Moderate Income Housing Fund
4. **FISCAL IMPACT:** This is a one-time action only. There is no ongoing fiscal impact to the General Fund as a result of this action.

**BUDGET REFERENCE**

Fund #	Appn #	Appn. Name	Total Appn	Amt. for Contract	2008-2009 Adopted Operating Budget (Page)	Last Budget Action (Date, Ord. No.)
443	3608	Second Mortgage-Loan Commitment	\$7,880,000	\$4,483,700	Xi-52	10/21/08 (Ord. # 28422)

**CEQA**

Not a project.

  
Leslye Krutko  
Director of Housing

For questions please contact Leslye Krutko, Director of Housing, at 408-535-3851.

Attachment

## Attachment 1

### Second Mortgage Loan Program Status # Loans and Funds Committed as of 4/1/2009

Development	CC District	Original Award	Amended Award (Feb 2009)	Loans Closed	Total Funds Used	Loans Under Review	Expected to be Committed or Closed Escrow by 4/25/09	Remaining Funds
Almaden Walk	6	\$400,000	\$700,000	5	\$300,000	0	\$120,000	\$280,000
City Heights	3	\$1,000,000	\$800,000	2	\$110,000	1	\$60,000	n/a- \$630,000 balance to be rolled into 2 <sup>nd</sup> mortgage high-rise program
Crimson	7	\$850,000	\$1,450,000	11	\$660,000	2	\$120,000	\$670,000
Jackson Park	5	\$1,330,000	\$1,330,000	9	\$490,000	0	\$340,000	\$500,000
Monte Vista	6	\$2,000,000	\$3,200,000	40	\$2,831,300	5	\$368,700	\$0
One East Julian	3	\$360,000	\$460,000	3	\$135,000	2	\$325,000	\$0
The Works	3	\$1,100,000	\$200,000	1	\$60,000	0	\$0	\$140,000
Villa Fontana	6	\$800,000	\$800,000	0	\$0	3	\$520,000	\$280,000
Villa Valencia	1	\$400,000	\$300,000	1	\$60,000	0	\$0	\$240,000
Village Square	6	\$760,000	\$760,000	4	\$240,000	2	\$200,000	\$320,000
Skyline	3	\$1,000,000	\$0	0	\$0	0	\$0	\$0
<b>TOTAL</b>		<b>\$10,000,000</b>	<b>\$10,000,000</b>	<b>76</b>	<b>\$4,886,300</b>	<b>15</b>	<b>\$2,053,700</b>	<b>\$2,430,000</b>
<b>Total Funds Potentially Available for New Construction Second Mortgage Program*</b>								<b>\$4,483,700</b>

\* Note: the Total Funds Used and Potentially Available does not include the \$630,000 that was rolled over into the Downtown High-Rise Second Mortgage Program approved by the City Council on April 7, 2009.