COUNCIL AGENDA: 9-11-12 ITEM: 2.12



Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Corsiglia

SUBJECT: SEE BELOW

DATE: September 4, 2012

Approved Date

COUNCIL DISTRICT: 8

SUBJECT: APPROVAL OF A NON-DISTURBANCE AGREEMENT FOR THE BOYS AND GIRLS CLUB OF SILICON VALLEY

REASON FOR ADDENDUM

The Boys and Girls Clubs of Silicon Valley (BGCSV) needs this action expedited so that they can receive income prior to September 15, 2012, to address their cash flow issues.

RECOMMENDATION

It is recommended that the City Council adopt a resolution authorizing the Director of Housing to negotiate and execute a Non-Disturbance Agreement with Valentine Capital, LLC to allow the Boys and Girls Clubs of Silicon Valley to enter into a Purchase and Sale Agreement to sell to Valentine Capital BGCSV's interest as Landlord in that certain PCS Site Agreement (Lease), which affects that certain real property located at 2195 Cunningham Avenue in East San José.

OUTCOME

The consummation of the sale of the Lease will allow the BGCSV to address cash flow issues and avoid the closure of one or two Clubhouse sites, related layoffs, and elimination of after school services to 200-400 underserved children.

BACKGROUND

In 2003, the BGCSV received a Community Development Block Grant (CDBG) grant for \$750,000 to renovate a soccer field at its Smythe Clubhouse. In exchange for the funds, the City

HONORABLE MAYOR AND CITY COUNCIL

September 4, 2012

Subject: Approval of a Non-Disturbance Agreement for The Boys and Girls Club of Silicon Valley

Page 2

placed a use restriction (via a lien) on the land requiring that the land be used for eligible CDBG activities. At the time, the lien covered two parcels – 2195 Cunningham (Smythe Clubhouse) and 2293 Cunningham (soccer field). In 2006, the BGCSV sold the soccer field to the City for \$1,000,000. A deed of trust securing the \$750,000 grant and use restriction remains as a lien against the Smythe Clubhouse property.

In April 2012, the BGCSV received an offer from Valentine Capital, LLC to purchase the Lease, which allows for cell towers to be located on the Smythe Clubhouse, for \$305,000. In exchange for the sale, the BGCSV would receive payment in three installments of \$101,667 beginning in June of 2012. Concurrently, the BGCSV was working with Focus Bank to obtain a Line of Credit. As part of the underwriting process of Focus Bank, it was required that the original \$750,000 lien be subordinated. The BGCSV worked with the City to subordinate the lien, and on April 26, 2012, a Subordination Agreement was executed. As a result, Focus Bank approved a line of credit for the BGCSV.

In connection with its acquisition of the Lease, Valentine Capital, LLC requested that Focus Bank and the City each execute a Non-Disturbance Agreement (NDA), which would provide that if either party foreclosed on the Property under their liens, they would not (after taking possession of the property) disturb the possession of Valentine Capital or the Lease. Focus Bank has already executed an NDA. In order for the City to approve the NDA, Council action is required, as neither the City Manager nor the Housing Department Director has the delegated authority to approve the agreement.

ANALYSIS

The lease sale's first installment was originally anticipated in June but was stalled due to title issues and the need to obtain the NDA from the City. During the months of July through August, BGSV operates Clubhouses both on school sites and in community centers, neither program is fully covered. BGCSV must raise additional dollars during the summer months to keep the Clbuhouses open. The summer months have always been the hardest fundraising months of the year; donations will begin to pick up during the fall and will peak during the holiday season. In the past, BGSV has been able to use its reserves to help them through the summer months. However due to the economic downturn they have exhausted their reserves. BGCSV has borrowed the maximum amount available against a line of credit to meet its July and August financial obligations. Absent a signed NDA, Valentine Capital, LLC has stated it will not proceed with the purchase. Without an installment payment by September 15, BGCSV will need to begin reducing services to mitigate expenses until cash is received. This action is necessary to allow the BGCSV to immediately address cash flow concerns until the grant funding resumes in late September and allows them to continue to provide necessary after-school programs for underserved youth.

HONORABLE MAYOR AND CITY COUNCIL

September 4, 2012

Subject: Approval of a Non-Disturbance Agreement for The Boys and Girls Club of Silicon Valley

Page 3

EVALUATION AND FOLLOW-UP

The Housing Department will process the NDA as soon as it has received City Council approval.

POLICY ALTERNATIVES

Alternative #: Do not approve the NDA.

Pros: None

Cons: Prevents BGCSV from obtaining needed funds to address its cash flow issues.

Reason for not recommending: Without the \$101K infusion by 9/15/12, BGCSV will not be able to meet payroll needs and will also have to close two to three sites to save on expenses.

PUBLIC OUTREACH/INTEREST

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

Although this item does not meeting the above criteria, this memorandum will be posted on the City's website for the September 11, 2012 meeting.

COORDINATION

This memo was coordinated with the Office of the City Attorney.

HONORABLE MAYOR AND CITY COUNCIL

September 4, 2012

Subject: Approval of a Non-Disturbance Agreement for The Boys and Girls Club of Silicon Valley

Page 4

CEQA

Not A Project, File No. PP10-066(a), Agreements for activities involving no physical changes to the environment.

/s/ LESLYE CORSIGLIA Director of Housing

For questions please contact Jacky Morales-Ferrand, Assistant Director, at (408) 535-3855.