CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: PUBLIC SAFETY, FINANCE AND STRATEGIC SUPPORT COMMITTEE

FROM: Julia H. Cooper

SUBJECT: **SEE BELOW**

DATE: November 5, 2009

Approved Deanna [signature] Date 11/10/09

COUNCIL DISTRICT: Citywide

SUBJECT: REVISIONS TO CITY OF SAN JOSÉ'S INVESTMENT POLICY TO INCLUDE THE SOCIAL RESPONSIBILTY OBJECTIVE OF FORECLOSURE MITIGATION

RECOMMENDATION

Direct staff to prepare the necessary changes to the City of San José's Investment Policy and to add a financial institution's commitment to foreclosure mitigation as one of several criteria used when evaluating the institutions short-term investment instruments[1] provided the financial institution meets the existing objectives of safety, liquidity, and yield and return to the City Council with the appropriate resolution and amended documents

OUTCOME

Acceptance of this recommendation will add a financial institution's effort toward foreclosure mitigation as an additional criterion, considered only after safety, liquidity and yield, when considering similar short-term investment instruments for the City's Investment Portfolio.

BACKGROUND

The City of San José's Investment Policy ("Investment Policy") requires an annual review and certification by the City Council. On June 9, 2009, staff submitted the Investment Policy and recommended revisions to Council for approval. During the Council meeting, the Council adopted the recommendation set forth in a memorandum drafted by Mayor Reed, Councilmember Liccardo, and Councilmember Nguyen, directing staff to research the feasibility of altering the City's Investment Policy to add a financial institution's commitment to

[1] Examples of permitted short-term investment instruments include Banker Acceptances (BA's), Negotiable Certificates of Deposit (NCD's), and Commercial Paper (CP)

foreclosure mitigation, as an additional criteria to be considered by staff when making investment decisions for a portion of the City's portfolio.

The aforementioned Memorandum dated June 5, 2009, set forth several considerations for staff's analysis, including the following:

- Assist homeowners facing foreclosure within the City of San Jose.
- Financial institution's commitment could be demonstrated by an outcome approach unless deemed too difficult to implement. In lieu of an outcome approach verification of participation in State and Federal programs would suffice.
- Foreclosure mitigation to be considered only after objectives of safety, liquidity and yield.
- Any investment made to facilitate proposed policy intent must continue to comply with the objectives, procedures and internal controls of the City's Investment Policy.
- Where investment vehicles appear to be similar in the objectives of safety, liquidity, and yield staff should consider a small concession from comparable yields to be appropriate to provide an incentive for foreclosure mitigation.
- Staff should consider the program to extend only to a small percentage portion of the total portfolio.

ANALYSIS

Based on the Council referral, Finance and Housing Department staff, along with assistance from the City Attorney's Office, commenced research and analysis on how to implement this direction. The result of this work is a proposed amendment to the Investment Policy that adds a new section 16.0, "Social Responsibility – Foreclosure Mitigation". The proposed revision and the body of staff's research and analysis is discussed below.

Proposed Investment Policy Revisions

16.0 SOCIAL RESPONSIBILITY –FORECLOSURE MITIGATION

"In addition to and subordinate to the objectives set forth in Section 4.0 herein, investment of funds should be guided by the following socially responsible investment goals when investing in permitted short-term investment instruments provided by mortgage servicers. To the extent competing financial institutions offer short-term investment instruments of substantially equivalent safety, liquidity and yield, the level of participation in the federal Home Affordable Modification Program (HAMP) and/or a Community Reinvestment Act rating of "satisfactory" or higher will be used as an investment criteria to differentiate between similar financial institution short-term investment instruments."

Professional Association and Peer City Investment Policy Review

Socially responsible and economic development policy considerations are acceptable components of an investment policy within the State of California and nationally. Both the Government Finance Officers Association of the United States and Canada (GFOA) and the California Debt and Investment Advisory Commission (CDIAC) include social and economic policy consideration components in their respective sample investment policies. In addition, staff reviewed investment policies for the City of Fresno, City and County of San Francisco, City of Los Angeles, and the City of Santa Monica whose investment policies contain socially responsible components. Staff is recommending that the Council add a social responsibility policy component for foreclosure mitigation that is subordinate to the traditional objectives of safety, liquidity and yield. This approach is similar to the approach taken by the Cities outlined above.

Investment staff is in the final stage of concluding a Request for Proposal process for Investment Advisory services. The RFP scope-of-services included a review of the City's Investment Policy to ensure that it conforms to California Government Code and reflects California peer city "best practices". In addition, the future investment advisor will participate in the annual review of any proposed changes to the investment policy and make recommendations.

Housing Department Foreclosure Mitigation Assessment Criteria

In meetings with Housing staff, the following financial institutions were identified as the primary mortgage servicers in the City: JPMorgan Chase, Wells Fargo Bank, and Bank of America.

Housing staff determined that, due to the absence of local performance reports, the best measurement of foreclosure mitigation is a financial institution's participation in the national Making Home Affordable initiative. As part of the Making Home Affordable initiative the Obama Administration has committed $75 billion to the Home Affordable Modification Program (HAMP) which encourages mortgage servicers to modify eligible loans that are 60-plus days delinquent. HAMP publishes a national report that tracks performance based on the number of potentially eligible loans who might qualify for a loan modification. All three of the identified servicers participate in the program and their modifications, as a share of eligible loans, are reported. For the reporting period through September 2009, the average percentage of eligible loans which were modified for all HAMP participants was 16%, JP Morgan Chase modifying 27% of eligible loans, Wells Fargo 20% of eligible loans, and Bank of America at 11% of eligible loans.

While Housing staff reported that local quantifiable performance measures are not readily available, they did provide a qualitative assessment of performance measures for JP Morgan Chase, Wells Fargo Bank, and Bank of America. Their qualitative assessment was based on participation, and help, in the Foreclosure Prevention Task Force, Foreclosure Help Center, HUD counselors, Foreclosure Prevention and Resource Fairs, and loan modification staffing level. The Housing Department's qualitative assessment mirrors the results of the HAMP programs' reporting with JP Morgan Chase and Wells Fargo demonstrating above average performance and Bank of America slightly below average.

In addition, Housing staff expressed that Community Reinvestment Act ratings of "satisfactory", or "outstanding", would also be a relevant metric in assessing a financial institution's commitment to meeting the credit needs of a community. The Community Reinvestment Act was enacted by Congress in 1977 and is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods.

Investment Program Implementation of New Policy Criteria

The Investment Program functions under the primary objectives of safety, liquidity and yield as outlined in the City's Investment Policy. In order to meet those objectives one of the program's strategies is investment portfolio diversification. For purposes of illustration, the following narrative demonstrates how an investment decision concerning commercial paper would be operationalized with the proposed policy criteria of foreclosure mitigation.

The program currently purchases commercial paper from five commercial paper issuers of which two are the identified mortgage servicers, Wells Fargo Bank and Bank of America. When the program seeks to add additional approved commercial paper issuers, an internal credit review is performed to ensure they meet or exceed the City's Investment Policy criteria of:

- Commercial paper of prime quality, defined as securities assigned the highest letter and number ratings provided by Moody's, Standard and Poor's, or Fitch.
- Issuing corporations must be organized and operating within the United States and have total assets in excess of $500 million.
- And shall issue debt, other than commercial paper, if any, that is rated "A" or higher by Moody's, Standard and Poor's or Fitch.

With the addition of the proposed policy criteria, the Investment Program would perform the necessary due diligence to determine if a financial institution should be added to the approved commercial paper issuer list. In the event that a financial institution met or exceeded the investment programs internal credit review, it would be added to the program's approved list. In addition to the City's current credit review process, the aforementioned future Investment

Advisor will also be providing the City with "best practices" credit review procedures for commercial paper issuers. If the approved institution was also one of the mortgage servicer names supplied by the Housing Department, then the Investment Program would check participation in HAMP and CRA ratings. If the investment staff concluded that the addition of financial institution commercial paper was appropriate for the portfolio, and all issuers still represented similar credit characteristics, the program could then utilize HAMP participation and CRA ratings to differentiate between issuers.

ALTERNATIVES

Not Applicable

EVAUATION AND FOLLOW-UP

Subject to direction from the PSFSS Committee, staff would prepare the necessary amendment and resolution for City Council approval.

PUBLIC OUTREACH/INTEREST

Not Applicable.

☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☐ **Criteria 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)**

☐ **Criteria 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

This staff report has been prepared by the Finance Department in coordination with the City Attorney's Office and the Housing Department.

COST SUMMARY/IMPLICATIONS

Not applicable

CEQA

Not a project

Julia H Cooper

JULIA H. COOPER
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For questions please contact Julia H. Cooper, Assistant Director of Finance, at (408) 535-7011.