RULES AGENDA: 04-16-08
ITEM: (C)(2)(a)

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE

FROM: Leslye Krutko

SUBJECT: SEE BELOW

DATE: April 10, 2008

Approved

Date 4-11-08

Council District: Citywide
SNI: N/A

SUBJECT: SUPPORT FOR FORECLOSURE PROTECTION LEGISLATION: H.R. 3221 (DODD AND SHELBY)

RECOMMENDATION

The Housing Department recommends that:

1. The Mayor and City Council support H.R. 3221 (Dodd and Shelby)
2. The Committee provide a one-week turn around for Mayor and City Council review.

OUTCOME

If the Rules and Open Government Committee and the Mayor and City Council accept staff's recommendation, the City's Federal lobbyist may begin seeking support for H.R. 3221.

BACKGROUND

The 2007-2008 Federal Legislative cycle has featured many bills that address the subprime lending crisis. One of these bills, H.R. 3221, the Foreclosure Prevention Act of 2008, is of particular interest to the City of San Jose. An analysis of H.R. 3221 is attached to this memo for the Rules and Open Government Committee consideration.

ANALYSIS

A fact sheet and analysis of H.R. 3221 is attached.

PUBLIC OUTREACH/INTEREST

☐ **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)**

This legislative item does not meet any of the above criteria.

COORDINATION

This memorandum was coordinated with the Intergovernmental Relations Director in the City Manager's Office and the City's Federal lobbyist Patton and Boggs.

POLICY ALIGNMENT

The attached fact sheet and analysis is consistent with the Council-adopted 2008 Legislative Guiding Principles, and the Council-adopted guidelines.

CEQA

Not a project

LESLYE KRUTKO
Director of Housing

For more information call Melissa Whatley, Policy Manager, at (408) 975-4418

Attachments (1)

H.R. 3221 (DODD AND SHELBY) – FORECLOSURE PREVENTION ACT OF 2008

What's the issue the bill is trying to resolve?

On April 3, 2008 Senators Dodd (D-CT) and Shelby (R-AL), Chairman and Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs, proposed a bipartisan response to the nation's housing crisis. The legislation would provide counseling to Americans facing foreclosure; help local communities deal with properties in their neighborhoods that have been abandoned or foreclosed upon; and reform the Federal Housing Administration (FHA). The provisions are outlined below.

- **FHA Modernization.** Increases the FHA loan limit from 95% to 110% of area median home price with a cap at 132% of GSE limit (currently, $550,000), allowing families in all areas of the country to access homeownership through FHA. Downpayments of 3.5% will be required for any FHA loan and counseling requirements are enhanced to help provide for stable homeownership.
- **Assisting Communities Devastated by Foreclosures.** Provides $4 billion to communities hardest hit by foreclosures and delinquencies. These supplemental Community Development Block Grant Funds will be used to purchase foreclosed homes, at a discount, and rehabilitate or redevelop the homes to stabilize neighborhoods.
- **Providing Pre-Foreclosure Counseling for Families in Need.** Provides $100 million in additional funding for housing counseling. These funds will be distributed by the Neighborhood Reinvestment Corporation by the end of 2008 to ensure families can quickly get the help they need and explore options with their mortgage servicer or lender to help keep them in their homes.
- **Enhancing Mortgage Disclosure.** Among other disclosure provisions, the bill requires that disclosures be provided no later than seven days prior to closing so borrowers can shop for another loan if not satisfied with the terms.
- **Preserving the American Dream for Our Nation's Veterans.** This bill lengthens the time a lender must wait before starting foreclosure from three months to nine months after a soldier returns from service and also provides returning soldiers with one year relief from increases in mortgage interest rates. In addition, the Department of Defense is required to establish a counseling program to ensure veterans and active service members can access assistance if facing financial difficulties. Also included is a provision that increases the VA loan guarantee amount, so that veterans have additional homeownership opportunities.
- **Standard Property Tax Deduction.** The bill will provide a standard deduction – $500 for single filers and $1,000 for joint filers – for the 28.3 million tax payers who do not itemize their tax deductions but pay property taxes.
- **Mortgage Revenue Bonds.** $10 billion of Federal tax-exempt private activity bond authority is included in this bill to provide local housing finance authorities the funding to refinance existing mortgages. Currently local housing finance authorities can only finance new mortgages.
- **Extension of Net Operating Loss Carryback.** Extends a law allowing corporations to apply excess net operating losses to tax returns from prior profitable years and receive any applicable refunds. The extension is supposed to help the housing sector by boosting the homebuilding industry. However, much of the tax benefit will go to firms that have no relation to housing.

- **Tax Credit for Purchase of Homes in Foreclosure.** Creates a $7,000 tax credit for buyers of such homes, to be claimed over two years.

How would the passage of this bill affect San José?

In 2007, the San José metro was ranked 51^{st} in the country in percent of households in foreclosure (0.9%). This is up 162% since 2006. As the rates on adjustable mortgages continue to reset upwards, it is expected that the number of foreclosure filings and repossessed homes will increase.

Of particular interest to the City of San Jose is the direct appropriation of a supplemental $4 billion to States and CDBG-eligible local governments. The funding formula will allocate funds to States and units of local government with the "greatest need", as determined by the HUD, considering the number and percentage in each state and local government of (1) home foreclosures; (2) homes financed by a subprime mortgage related loan; and (3) homes in default or delinquency. The Department of Housing and Urban Development (HUD) must set the formula within 60 days and distribute these funds 30 days after that. Finally, the bill allows this funding to be used for households whose income does not exceed 120% of the area median income, but also incorporates a set-aside that at least 25% of funds must be used for households whose incomes do not exceed 50% of the area median income.

What is staff's Proposed Position?

Staff recommends support of H.R 3221 if amended. Specifically, the City's administration requests an amendment related to the CDBG funding allocation, and notes concerns about the following provisions: (1) tax credits for purchases of homes in foreclosure; (2) extension of net operating loss carryback; and (3) the standard property tax deduction.

First, while the legislation provides new protections for homeowners, and assists communities that have already been affected by the foreclosure crisis, staff has concerns with some of the provisions related to the CDBG allocation. Under this allocation, the grantees may provide assistance to households up to 120% of median income. However, not less than 25% of the $4 billion appropriated by the bill must be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house families whose incomes do not exceed 50% of area median income. This provision could prove to be very difficult to implement in San José. In a location where the median priced homes are still around $699,800, it would be impossible to get a family of four making 50% of area median income (about $53,000) to qualify without providing extremely deep public subsidies. Much of the subprime problem was created by trying to provide homeownership to people without the financial means to afford to be homeowners.

Finally, staff believes that the tax credits for purchases of homes in foreclosure, extension of net operating loss carryback, and the standard property tax deduction provision do little to assist residents from losing their homes. These provisions primarily will benefit banks and lenders and homeowners that may or may not face foreclosure. H.R. 3221 will largely provide assistance after foreclosure has occurred rather than helping homeowners from losing their homes.

Who are the bill's supporters and opponents?

As of April 4, 2008, the following groups are expect to endorse H.R. 3221: AARP, ACORN, AFL-CIO, Black Leadership Forum, CDFI Coalition, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Lawyers Committee for Civil Rights Under Law, Leadership Conference on Civil Rights, National Association for the Advancement of Colored People (NAACP), National Association of Consumer Advocates, National Association of Consumer Bankruptcy Attorneys, National Consumer Law Center (on behalf of its low-income clients), National Council of LaRaza, National Neighborworks Association, Opportunity Finance Network, Service Employees International Union, United Auto Workers, and U.S. Conference of Mayors.

Several organizations (including the President's Administration) expressed concerns with provision that appropriate $4 billion for assistance to State and local governments for the redevelopment of abandoned and foreclosed homes through a new program in the Department of Housing and Urban Development (HUD). The Administration also opposes more than tripling the funding for the Neighborhood Reinvestment Corporation (NRC) in FY 2008. Finally, the controversial amendment of H.R. 3221, which included language that provided bankruptcy judges with power to modify the terms of mortgages for debtors in bankruptcy proceedings, was voted down last week.

What is the current status of the measure?

The bipartisan legislation was presented on April 3, 2008 and is expected to be debated during the week of April 15th on the House Floor. The House Financial Services committee held the first of a 2-day hearing on April 9, 2008. The Mayors of Las Vegas, Boston, and D.C. were scheduled to testify as local witnesses. The legislation is expected to move quickly to the Senate.