RULES COMMITTEE: 09-09-09
ITEM: H.1

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES AND OPEN GOVERNMENT COMMITTEE

FROM: Betsy Shotwell

SUBJECT: **2009 LEAGUE OF CALIFORNIA CITIES RESOLUTIONS**

DATE: September 1, 2009

Approved

Date 9/4/09

RECOMMENDATION

Approve the recommended City positions for two (2) resolutions to be considered at the Annual League of California Cities (LOCC) Conference to be held in San Jose, September 16-18. A one-week turnaround to the Mayor and City Council is requested.

OUTCOME

By approving the recommended positions for the two resolutions, our City representative attending the Annual Business meeting will have the Council's direction for votes to be taken on each resolution.

BACKGROUND

Each year, the LOCC accepts resolutions from member cities, and elected officials to be adopted at its annual conference. Before the conference, the resolutions undergo review by the appropriate LOCC policy committees. On Wednesday, September 16, policy committees will meet for a final review of the resolutions. Next, the General Resolutions Committee will meet on Thursday, September 17, to consider the policy committees' reports and to take action on their recommended positions. Resolutions that are approved by the General Resolutions Committee will then be reported on the floor of the General Assembly at the Annual Business meeting, on Friday, September 18.

The voting delegates at the Annual Business meeting make the final determination on the resolutions.

ANALYSIS

The staff analyses and original language of the resolutions are attached for your consideration. In addition, the summary below has been provided as a summary of the recommended City positions for each resolution.

2009 Proposed League of California Cities Resolutions

Resolution	Recommended City Position
1. Social Host Liability	Approve
2. Divesting From Banks/Financial Institutions That Fail to Cooperate With Foreclosure Prevention Efforts	Disapprove

PUBLIC OUTREACH

- ☐ **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 document will be posted on the City's website for the September 9, Rules and Open Government Committee where the Council and the public have the opportunity to comment.

COORDINATION

This memorandum was coordinated with the City's Legislative Representative in Sacramento, the City Attorney's Office, the Police Department, Finance Department, Housing Department, Budget, Retirement, and the Redevelopment Agency.

Betsy Shotwell
BETSY SHOTWELL
Director, Intergovernmental Relations

For more information contact: Betsy Shotwell, Director of Intergovernmental Relations at (408) 535-8270.

Attachment: 2009 Annual Conference Resolutions and staff analyses and recommendations

1. Resolution Relating to Social Host Liability

Recommended City Position: Approve

Source: City of Elk Grove
Referred to: Public Safety Policy Committee

Background and Analysis:

This resolution, sponsored by the City of Elk Grove, requests that the League of California Cities (LOCC) support policies that hold social hosts responsible for underage drinking that occurs on property under their possession, control, or authority; and oppose policies that make it easy for those who are underage to access alcohol through adults, and on private property.

Social hosting is defined as adults in private settings providing alcohol and/or allowing underage drinking among children who are not their own. Social host liability laws target the location in which underage drinking takes place and holds non-commercial individuals responsible for underage drinking events on property they own or lease. In some states, the social host is held criminally liable for committing a misdemeanor could be punished with a monetary fine and/or up to one-year in jail. As of 2006 there were 20 states with state criminal social host laws.

California has no state criminal law on social host liability however, pursuant to California statute, a parent or legal guardian who knowingly permits his or her child, or a person in the company of the child, or both, who are under the age of 18 years, to consume alcohol or use a controlled substance at the home of the parent or legal guardian is guilty of a misdemeanor if all of the following occur:

(1) As the result of the consumption of an alcoholic beverage or use of a controlled substance at the home of the parent or legal guardian, the child or other underage person has blood-alcohol concentration of 0.05 percent or greater, as measured by a chemical test, or is under the influence of a controlled substance.
(2) The parent knowing permits that child or other underage person, after leaving the parent's or legal guardian's home, to drive a vehicle.
(3) That child or underage person is found to have caused a traffic collision while driving the vehicle.

(California Business & Professional Code, s 25658.2)

The City of Elk Grove states in their background information (attached) that "currently, law enforcement is somewhat limited in its authority to control what occurs on private property. California state law prohibits furnishing alcoholic beverages to underage persons; however, the law does not address the consequences when a minor possesses or consumes alcohol while on private property, or when such alcohol consumption is done with the consent of an adult, parent, relative, or legal guardian. When law enforcement

officers receive a complaint regarding an unruly party or event on private property where underage drinking is occurring, it is extremely difficult to take any action that results in the responsible individual or host being held accountable."

The City of San Jose's Police Department regularly responds to disturbance calls and the adult present will receive a citation if they are shown contributing to the delinquency of a minor. Minors, however, will generally not get a citation because they are on private property. Staff supports the resolution's request for the LOCC to support policies that holds social hosts responsible for underage drinking that occurs on property under their possession, control, or authority, with the intention of protecting public health and safety; provide a legal means to prohibit consumption of underage drinking of alcohol; and reduce costs to public safety agencies responding to locations where alcoholic beverages are being served to, or consumed by minors.

Recommended City Position: Approve

Coordination: The Police Department and the City Attorney's Office

2. Resolution Urging City Governments and Others to Divest From Banks That Fail to Cooperate With Foreclosure Prevention Efforts.

Recommended City Position: Disapprove

Source: Richard Alarcon, Council Member, Los Angeles
Referred to: Revenue and Taxation Policy Committee

Background and Analysis:

This resolution requests that member LOCC cities "explore the potential divestiture of all deposits in banking and other financial institutions that fail to cooperate with foreclosure prevention efforts that include temporary moratoriums on foreclosures, renegotiation of mortgage principles to reflect current values, and good faith negotiations with mortgages" and that the LOCC also support City retirement programs and other similar organizations which adopt a similar divestiture policy and request that the National League of Cities to consider adoption of a similar resolution.

The current resolution being proposed to the LOCC Revenue and Taxation Committee is inspired by a 1998 resolution by Los Angeles City Council Member Alarcón. The purpose of the 1998 resolution was to assist Holocaust victims and their heirs in seeking restitution from the Swiss government and banks for money and assets confiscated during WWII. That resolution contemplated severing various financial ties with those institutions including, but not limited to, terminating letters of credits, terminating investment agreements, and liquidating holdings (presumably debt and equities of those institutions).

The resolution pending before the LOCC Revenue and Taxation Committee encourages cities to "explore the potential divestiture of all deposits in banking and other financial institutions that fail to cooperate with foreclosure prevention efforts"; however, it is unclear what would constitute failure to cooperate.

- Would participation in a program, such as the U.S. Treasury's Making Home Affordable (MHA) program, be sufficient in and of itself or would a particular level of performance in such a program be required? Attached for reference is the August 4, 2009 MHA Status Report describing the progress of each bank participating in that program.
- A recent Bloomberg article cites Bank of America as "among [the] worst for loan modifications"; however, Bank of America is participating in the MHA program and it is not clear whether their percentage is low because they are resisting loan modifications or if the low percentage is a function of having a very large portfolio with limited staff resources.
- Furthermore, the corporate structure of some financial institutions is extremely complex, so identifying whether a particular entity is cooperating or not may also present a challenge for staff.

- The City maintains relationships with a wide range of banks through its debt program (approx $5.8 billion including City and RDA debt).
    - It would be very difficult at this time to replace a Letter of Credit (LOC) if a provider was found to be failing to cooperate.
    - Letters of credit are utilized to support the City's portfolio of variable rate demand bonds and its two commercial paper programs. Our existing program includes 16 LOC's for $1.17 billion of debt that would be at risk (note this does not include the City's conduit debt risk that we issue for housing projects for developers).
    - Staff is also working with a major bank to acquire a letter of credit to support affordable housing activities and those negotiations have highlighted the challenges and difficulties we face in the current credit markets.

- With respect to investment agreements (IA), the City has IA's with Citigroup currently valued at approx. $374 million from bond funds associated with our airport master plan project.
    - If Citigroup were to be identified as an entity failing to cooperate, then terminating those investment agreements would be particularly detrimental to the City
    - The yield on the IA's is significantly higher than current market rates.
    - Based on current market interest rates, if we were required to cancel the IA's, the City could loose up to $5 million (the difference between the yields we are receiving from the IA compared to current interest rates for alternative investments).

- **It would appear preferable to reward banks with future business for "good" behavior rather than punishing banks for "bad" behavior.**
    - Per a Council referral on this issue, staff is currently working on a proposal to bring back to council committees and ultimately to the City Council for approval an alternative approach whereby the City may "reward" financial institutions who are participating in foreclosure prevention efforts through our Investment Program.
        - Finance is working internally on the proposed investment strategy and pending input and discussion with the Housing department.

With the above information and stated concerns, staff recommends that the City disapprove the proposed resolution pending before the LOCC Revenue and Taxation Committee at the League's annual conference in September.

Recommended City Position: Disapprove

Coordination: Finance, Housing, Budget, Retirement, the Redevelopment Agency and the City Attorney's Office.

Making Home Affordable Program

Servicer Performance Report through July 2009

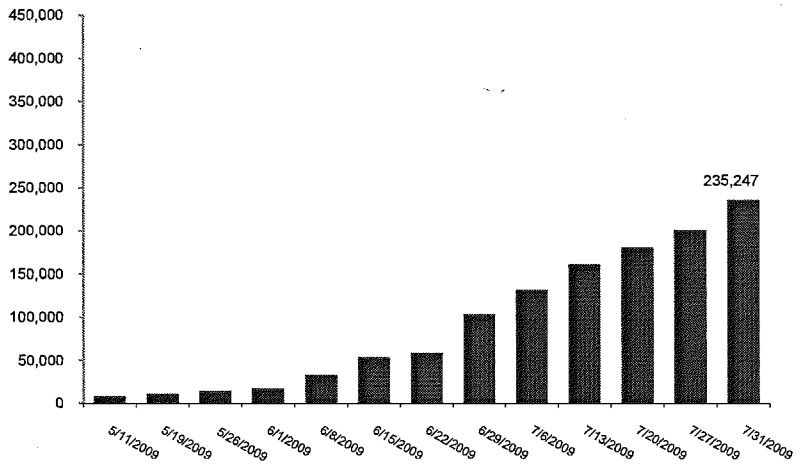
Home Affordable Modification Program (HAMP) Snapshot through July 2009[1]

Number of Trial Modifications Started[2] (Cumulative)	235,247
Number of Trial Period Plan Offers Extended to Borrowers (Cumulative)	406,542
Number of Requests for Financial Information Sent to Borrowers (Cumulative)	1,387,218

[1]Source: Survey data provided by servicers.

[2] Trial modifications start when the first trial payment is received.

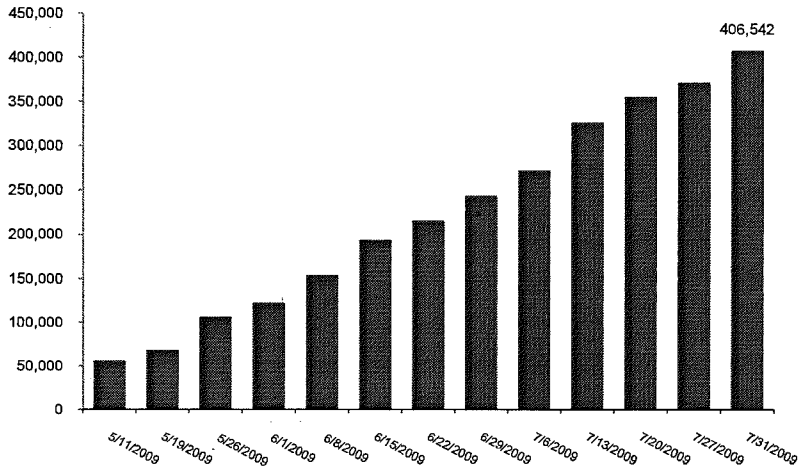
HAMP Trial Modifications Started (Cumulative)



HAMP Participating Servicers

- Approximately 85% of mortgages are covered by HAMP participating servicers.
- 38 servicers have signed servicer participation agreements to modify loans under HAMP. These participants service loans owned or guaranteed by Fannie Mae or Freddie Mac, loans held in portfolio, or loans serviced on behalf of other investors.
- Approximately 2,300 participants service loans owned or guaranteed by Fannie Mae or Freddie Mac. These servicers automatically participate in HAMP.

HAMP Trial Plans Extended to Borrowers (Cumulative)



MAKING HOME AFFORDABLE SM

Additional information on HAMP can be found on MakingHomeAffordable.gov or call the Homeowner's HOPE Hotline at 1-888-995-HOPE (4673).

Making Home Affordable Program

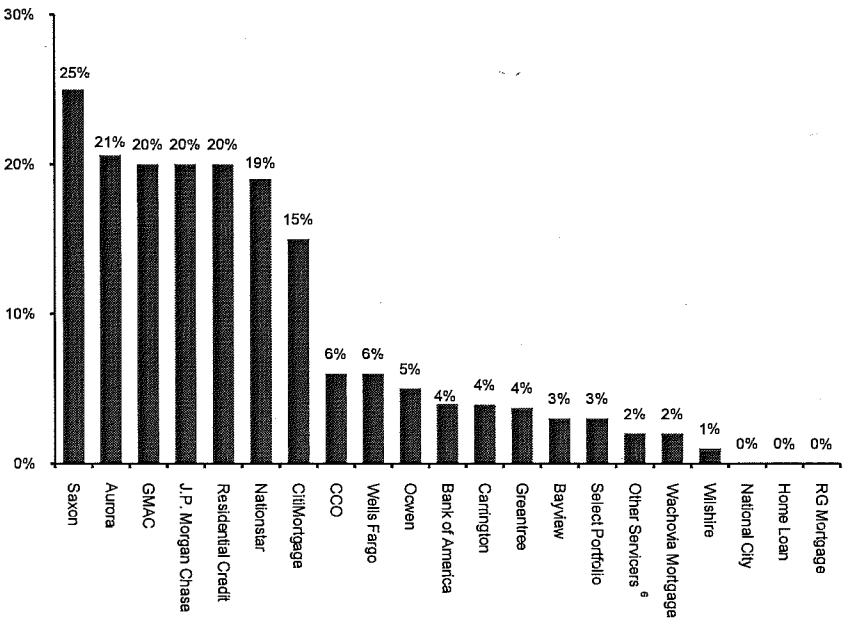
Servicer Performance Report through July 2009

HAMP Modification Activity by Servicer

Servicer	Participation Date	Estimated Eligible 60+ Day Delinquency[1]	Trial Plan Offers Extended	Trial Plan Offers as Share of Estimated Eligible 60+ Day Delinquencies	Trial Modifications Started	Trial Modifications as Share of Estimated Eligible 60+ Day Delinquencies
American Home Mortgage Servicing Inc[5]	7/22/2009	153,097	NA	NA	NA	NA
Aurora Loan Services, LLC	5/1/2009	72,838	25,965	36%	15,320	21%
Bank of America, NA[2]	4/17/2009	796,467	99,649	13%	27,985	4%
Bayview Loan Servicing, LLC	7/1/2009	4,425	225	5%	148	3%
Carrington Mortgage Services, LLC	4/27/2009	14,128	988	7%	597	4%
CCO Mortgage	6/17/2009	3,818	402	11%	237	6%
J.P. Morgan Chase Bank, NA[3]	4/13/2009	394,075	117,259	30%	79,304	20%
CitiMortgage, Inc.	4/13/2009	185,418	38,673	21%	27,571	15%
Citizens First Wholesale Mortgage Company	6/26/2009	26	8	31%	7	27%
Farmers State Bank	7/17/2009	8	NA	NA	NA	NA
First Bank[5]	7/29/2009	848	NA	NA	NA	NA
First Federal Savings and Loan	6/19/2009	16	1	6%	1	6%
GMAC Mortgage, Inc.	4/13/2009	61,326	20,924	34%	12,540	20%
Green Tree Servicing LLC	4/24/2009	5,228	451	9%	209	4%
Home Loan Services, Inc.	4/20/2009	33,193	0	0%	0	0%
IBM Southeast Employees' Federal Credit Union	7/10/2009	72	4	6%	4	6%
Lake National Bank	7/10/2009	1	0	0%	1	100%
Mission Federal Credit Union	7/22/2009	34	NA	NA	NA	NA
MorEquity, Inc.	7/17/2009	2,196	NA	NA	NA	NA
Mortgage Center, LLC	7/22/2009	235	NA	NA	NA	NA
National City Bank	6/26/2009	37,126	92	0%	4	0%
Nationstar Mortgage LLC	5/28/2009	25,690	11,443	45%	4,854	19%
Ocwen Financial Corporation, Inc.	4/16/2009	55,516	6,502	12%	2,517	5%
PNC Bank, National Association	7/17/2009	724	NA	NA	NA	NA
Purdue Employees Federal Credit Union[5]	7/29/2009	11	NA	NA	NA	NA
Residential Credit Solutions	6/12/2009	1,304	301	23%	265	20%
RG Mortgage Corporation	6/17/2009	3,309	72	2%	0	0%
Saxon Mortgage Services, Inc.	4/13/2009	84,130	30,817	37%	21,130	25%
Select Portfolio Servicing	4/13/2009	57,450	11,404	20%	1,849	3%
Shore Bank[5]	7/17/2009	223	NA	NA	NA	NA
Technology Credit Union	6/26/2009	10	0	0%	0	0%
Wachovia Mortgage, FSB	7/1/2009	62,852	2,028	3%	1,356	2%
Wachovia Bank, NA	7/29/2009	2,593	NA	NA	NA	NA
Wells Fargo Bank, NA	4/13/2009	329,085	38,673	12%	20,219	6%
Wescom Central Credit Union	6/19/2009	136	40	29%	38	28%
Wilshire Credit Corporation	4/20/2009	3,411	621	18%	20	1%
Other GSE Servicers[4]		314,283	-	-	19,071	6%
Total		2,705,302	406,542	15%	235,247	9%

Note: NA denotes a newly signed servicer that has not yet started reporting

Trial Modification Tracker: Trial Modification Starts as a Share of Estimated Eligible 60 Plus Day Delinquencies



[1]Estimated eligible sixty plus day delinquent loans include loans:

- in foreclosure and bankruptcy.
- with a current unpaid principal balance less than $729,750 on a one unit property, $934,200 on a two unit property, $1,129,250 on a three unit property and $1,403,400 on a four unit property.
- on a property owner-occupied at origination.
- originated prior to January 1, 2009.

Estimated eligible sixty plus day delinquent loans excludes:

- FHA and VA loans.
- loans that are current or less than 60 days delinquent, which may be eligible for HAMP if a borrower is in imminent default.

[2] Bank of America, NA includes Countrywide Home Loans Servicing LP.
[3] J.P. Morgan Chase Bank, NA includes EMC Mortgage Corporation.
[4] Includes approximately 2,300 participants that service loans owned or guaranteed by Fannie Mae and Freddie Mac.
[5] Estimated Eligible 60+ Day delinquencies based on the servicer registration form.
[6] Other Servicers include entities with less than 1,000 Estimated Eligible 60+ Day Delinquencies.

MAKING HOME AFFORDABLE

V.

2009 ANNUAL CONFERENCE RESOLUTIONS

RESOLUTION REFERRED TO PUBLIC SAFETY POLICY COMMITTEE

1. RESOLUTION RELATING TO SOCIAL HOST LIABILITY

Source: City of Elk Grove
Referred to: Public Safety Policy Committee
Recommendation to General Resolutions Committee:

WHEREAS, underage persons often obtain alcoholic beverages at gatherings held at private residences or at rented residential and commercial premises that are under the control of a person who knows or should know of the underage service and/or consumption of alcohol; and

WHEREAS, loud or unruly parties on private property where alcoholic beverages are served to, or consumed by an underage person, are harmful to the underage person themselves and are a threat to public health, safety, quiet enjoyment of residential property and general welfare, and constitute a public nuisance; and

WHEREAS, persons responsible for the occurrence of loud or unruly parties on private property over which they have possession or control have a duty to ensure that alcoholic beverages are not served to, or consumed by underage persons; and

WHEREAS, adults who provide alcohol to adolescents explicitly indicate an approval of underage alcohol use; and

WHEREAS, law enforcement, fire, or other emergency responders repeatedly respond to underage drinking parties, resulting in a disproportionate expenditure of public safety resources on these parties, delaying police responses to other emergency calls throughout the community; and

WHEREAS, law enforcement has inadequate enforcement authority and resources to respond to underage drinking on private property; and

WHEREAS, cities and counties require a variety of enforcement strategies to abate underage drinking parties; now, therefore, be it

RESOLVED, by the General Assembly of the League of California Cities, assembled in Annual Conference in San Jose, September 18, 2009, that the League support policies that hold social hosts responsible for underage drinking that occurs on property under their possession, control, or authority; and, be it further

RESOLVED, that the League also oppose policies that make it easy for those who are underage to access alcohol through adults, and on private property.

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Background Information on Resolution No. 1

Source: **City of Elk Grove**
Title: **Resolution Relating to Social Host Liability**

Background:
The City of Elk Grove is located just south of the state capital of Sacramento. According to the 2007 U.S. Census, the City's population was estimated at 140,000. After incorporating in July of 2000, for six years the City contracted with the Sacramento County Sheriff's Department for police services; however in 2006, the City formed its own police department and began serving this rapidly growing community. Since the Department's inception, the city has continued to grow in size, leading to an increasing need for additional officers to patrol the streets, investigate crimes, and respond to calls for service.

Between January 1, 2007 and December 31, 2008, the Elk Grove Police Department (EGPD) responded to more than 2,000 reports of loud and unruly parties, noise and/or music at private residences. The majority of these calls involved persons under the age of 21 who were consuming alcohol. This is a dangerous combination not only for those participating and in attendance, but also for surrounding neighbors, the community, and law enforcement personnel.

Underage drinking and unruly parties lead to an array of problems such as; alcohol related traffic accidents, gang activity, fights, noise disturbances, sexual assault, property damage, and other forms of crime. When law enforcement personnel responds to gatherings involving the consumption of alcohol by minors, it takes away valuable resources from other service calls in the community, thereby placing the community at an increased risk. Additionally, adults who give alcohol to minors are explicitly approving underage drinking while showing a complete disregard for the law, the well-being of minors, and the community as a whole.

Currently, law enforcement is somewhat limited in its authority to control what occurs on private property. California state law prohibits furnishing alcoholic beverages to underage persons; however, the law does not address the consequences when a minor possesses or consumes alcohol while on private property, or when such alcohol consumption is done with the consent of an adult, parent, relative, or legal guardian.

When law enforcement officers receive a complaint regarding an unruly party or event on private property where underage drinking is occurring; it is extremely difficult to take any action that results in the responsible individual or host being held accountable. Furthermore, law enforcement, fire and emergency response services are not currently reimbursed for the costs associated with responding to a location where minors obtain, possess, and consume alcoholic beverages.

The goal of Social Host Liability is: 1) to protect public health, safety and general welfare; 2) provide a legal means of prohibiting the service to and consumption of alcoholic beverages by minors on private property; and 3) to reduce the costs of providing law enforcement, fire, and other emergency response services to premises where alcoholic beverages are being served to or consumed by minors.

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RESOLUTION REFERRED TO REVENUE AND TAXATION POLICY COMMITTEE

2. RESOLUTION URGING CITY GOVERNMENTS AND OTHERS TO DIVEST FROM BANKS THAT FAIL TO COOPERATE WITH FORECLOSURE PREVENTION EFFORTS

Source: Richard Alarcón, Council Member, Los Angeles
Referred to: Revenue and Taxation Policy Committee
Recommendation to General Resolutions Committee:

WHEREAS, there is currently a financial crisis in our nation, where people are losing their jobs and homes and no longer have the financial security that was once possible and which contributed to the growing prosperity of our economy; and

WHEREAS, this crisis is affecting communities at all levels, with working class communities the most severely affected, as they were often explicitly targeted and preyed upon by lenders and brokers offering unconventional loans and financing options; and

WHEREAS, as the local, state, and federal governments work on resolving the current foreclosure crisis, one of the key factors that must be addressed is the modification of loans that are "upside-down," and which need to be modified to the current market value of the home, not the original loan amount, so that homeowners facing foreclosure receive true relief from the burden of the loans they were unjustly pushed into by aggressive lenders and brokers; and

WHEREAS, currently, there is active pressure on financial institutions to modify loans for homeowners susceptible to foreclosure by reducing the principal to the current market value and many financial institutions are not inclined to do this, particularly with no financial incentive; and

WHEREAS, as with local government, financial institutions have an obligation in assisting their customers to preserve the American Dream; now, therefore, be it

RESOLVED, by the General Assembly of the League of California Cities, assembled in the Annual Conference in San Jose, September 18, 2009, that the League support the City of Los Angeles, and other member cities, to explore the potential divestiture of all deposits in banking and other financial institutions that fail to cooperate with foreclosure prevention efforts that include temporary moratoriums on foreclosures, renegotiation of mortgage principles to reflect current values, and good faith negotiations with mortgagees; and, be it further

RESOLVED, that the League of California Cities also support City retirement programs and other similar organizations which adopt a similar divestiture policy; and, be it further

RESOLVED, that the League of California Cities request the National League of Cities to consider adoption of a similar resolution.

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Background Information on Resolution No. 2

Source: **Richard Alarcón, Council Member, Los Angeles**
Title: **Resolution Relating to City Governments And Others To Divest From Banks That Fail To Cooperate With Foreclosure Prevention Efforts**

Background:
The foreclosure crisis in America today is profound. In 2008, about 1 million homes were foreclosed. With rising unemployment, this trend is only projected to continue. While foreclosure is devastating to homeowners, it also harms property values, neighborhood safety and government revenue. Local governments are hit especially hard by the foreclosure crisis due to the decrease in property taxes collected, as well as costs related to foreclosures – particularly for safety. A single foreclosure costs up to $34,000 for local government agencies, through inspections, court actions, police and fire department efforts, potential demolition, unpaid water and sewage, and trash removal. Foreclosures eat up money that could have been available for housing, transportation, parks and recreation, public safety, etc.

It is therefore incumbent on cities to take action to protect their communities and their finances. Cities must step in to force financial institutions to be responsible neighbors and protect the property from vandalism, return it to the market quickly, and find a buyer. Doing this remediation work is difficult but many cities have already been at work on solutions for the last two years. Unfortunately, the key "partner" in this work – the financial institutions holding the property title – have in many cases not upheld their side of the bargain. So what can cities do when the title holding bank will not cooperate? Cities can and should use their financial clout and divest their funds from financial institutions which do not cooperate with foreclosure prevention and remediation efforts, thus providing pressure for these groups to change their policies.

Earlier this year Councilmember Alarcón introduced a motion in the City of Los Angeles to do just that. The idea came from his effort in 1998 to assist Holocaust victims and their heirs in seeking restitution from the Swiss government and banks for money and assets confiscated during WWII. After the Councilmember introduced a motion to have the City of Los Angeles divest all funds from Swiss banks, negotiations involving the banks and the World Jewish Congress began and ultimately resulted in a settlement of $1.25 billion later that year. If it worked then, it can work now.

It is Councilmember Alarcón's belief that if cities all around California were to take action and begin the process towards divestment, it would result in banks and other financial institutions, which do not currently work with foreclosure prevention efforts, to reverse their policies. This could help thousands of families throughout California and put us back on track to a prosperous economy.

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[NOTE: No resolutions were assigned to the following policy committees: Administrative Services; Community Services; Employee Relations; Environmental Quality; Housing, Community & Economic Development; and Transportation, Communication & Public Works.]

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