



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand

SUBJECT: SEE BELOW

DATE: December 2, 2020

Approved

Date

12/4/20

SUBJECT: APPROVE THE SALE OF TWO PROPERTIES WITH CITY LOANS BY HOUSING FOR INDEPENDENT PEOPLE AND THE RELEASE OF 30 YEAR AFFORDABILITY RESTRICTIONS ON NINE SITES

RECOMMENDATION

- (a) Accept the staff report.
- (b) Adopt a resolution authorizing the Director of Housing to:
 - (1) Negotiate and execute two 55-year affordability restrictions for properties owned by Housing for Independent People (HIP) located at 5668 and 5684 Hoffman Court;
 - (2) Negotiate and execute rescissions for the 30 year restrictions on HIP properties recorded on August 29, 1990 on the following properties located in San José: 3825 Barker Drive, 1579 Branham Lane, 3456 Calvin Avenue, 1824 Curtner Avenue, 1794 Donna Lane, 1231 Minnesota, 1726 Ross Circle, 1713 Ross Circle, and 1731 Ross Circle and any other associated documents and amendments; and
 - (3) Negotiate and execute documents needed to facilitate the sale, by HIP, of the properties located at 3456 Calvin Avenue and 1726 Ross Circle.

OUTCOME

Approval of the recommended actions will enable HIP to sell two properties and restructure rents in order to increase the financial viability of the remaining portfolio. These proposed changes will be made while minimizing displacement of current residents and maintaining the remaining portfolio as affordable housing for future low-income residents.

BACKGROUND

Housing for Independent People (HIP) was formed in 1980 to provide housing to persons with developmental or psychiatric disabilities. HIP's mission expanded to provide housing to persons with AIDS/HIV and people transitioning from homelessness or at risk of homelessness. The City made loans to HIP to acquire and rehabilitate 14 small affordable housing properties. In 2012, HIP and Abode Services (Abode) merged to enhance HIP's management and organizational capacity. Abode was formed in 1988 with a mission to provide permanent homes for individuals and families experiencing homelessness.

Outstanding Loans

On August 20, 1990, the City of San José and HIP executed a consolidated promissory note in the amount of \$1,197,500 ("Consolidated Loan"), consolidating thirteen prior promissory note obligations secured with deeds of trust on nine properties. The note was amended to reflect the consolidation on properties located at 3825 Barker Drive, 1579 Branham Lane, 3456 Calvin Avenue, 1824 Curtner Avenue, 1794 Donna Lane, 1231 Minnesota, 1726 Ross Circle, 1713 Ross Circle, and 1731 Ross Circle. The Consolidated Loan promissory note was amended in January 1999 and in October 2005, including a change to the maturity date to August 20, 2020. The outstanding balance for this note, as of August 28, 2020, was \$806,510.90. All of the affordability restrictions on these properties were recorded on August 29, 1990.

On June 17, 2014, the City Council approved a conditional grant to HIP, for up to \$1,800,000 to rehabilitate its existing affordable rental properties at the following ten locations: 1059 Roewill Drive, 3825 Barker Drive, 247-249 Muirfield Drive, 1231 Minnesota Avenue, 2551 Sesame Court, 1713 and 1731 Ross Circle, and 5629, 5668 and 5684 Hoffman Court. HIP was also granted a project based rental subsidy and operator subsidy in connection with 31 apartments or rooms in single-family and multifamily dwellings for extremely low-income ("ELI") homeless individuals and families referred to by the City, for up to five years. As a closing condition to the grant, HIP was required to amend its City affordability restrictions for its properties using the shared supportive housing so as to ensure ongoing affordability and compliance of the whole HIP portfolio.

Grant Agreements

On January 27, 2015 the City Council approved amending the Affordability Restrictions for the properties located at 3825 Barker, 3456 Calvin, 1824 Curtner, 5629, 5668, and 5684 Hoffman, 1231 Minnesota; and 1713 and 1731 Ross. The amendment allowed these HIP properties to be used for shared housing, each with separate leases. The City Council also approved an increase in the conditional grant, of up to \$300,000 which would cover the soft costs made under the grant for the Homeless Housing Program. The

original grant amount was increased by up to \$200,000, for additional hard costs incurred in the rehabilitation.

On August 26, 2015, the City and HIP executed a Grant Agreement ("HHP Grant Agreement") in which HIP agreed to rehabilitate the above mentioned properties and to provide housing services to certain individuals. Two of those HIP-owned properties identified at 247-249 Muirfield Drive and 2551 Sesame Court, which previously did not have City funding or restrictions, also received funding. The total grant amount provided for the rehabilitation from the Homeless Housing Program funds ("HHP Funds") was up to \$2,300,000. Per the Grant Agreement, HIP, was to work in good faith, and assist the City with the completion of amendments to the Affordability Restrictions and Notes for the above mentioned Properties, consistent with the executed term sheets.

HIP and Abode have acknowledged that there was a general mutual understanding between HIP and the City regarding the affordability restrictions on the properties. The amendments to the restrictions were to be executed as consideration of receiving the HHP grant, consistent with the executed term sheets and that the any additional details of the note amendments and the required affordability restriction extensions would be completed at the same time as the rehabilitation. HIP and Abode received the HHP Funds for the rehabilitation of the Sites, completed the rehabilitation of those Sites, and provided the City subsidized housing for the period required under the grant. However, the amendments and the extensions of the affordability restrictions were completed consistent with the term sheets but never executed by HIP or recorded.

Financial Viability of the HIP Portfolio

In June 2018, HIP notified the City that the HIP portfolio was not financially viable and Abode was subsidizing the operations of the Sites. As a result, the Housing Department worked with Abode to explore options on how to make the Sites financially feasible. Several actions were explored to ensure long-term financial feasibility while minimizing displacement of current residents and maintaining affordability for the greatest number of homes as possible.

ANALYSIS

HIP informed the City it could not extend the affordability restrictions on the nine Consolidated Loan properties that were recorded on August 29, 1990 as provided in the grant and term sheets and still maintain financial viability for the portfolio. The HIP properties are small scattered sites which do not have the efficiencies of larger affordable projects.

Under California Community Redevelopment law, for projects funded prior to January 1, 1991 affordable rents for lower income persons must not exceed 25% of the household's gross income. This requirement has been a significant factor in impacting the financial viability of the nine Consolidated Loan properties, but in order to amend those terms, new restrictions would be needed. New restrictions recorded after 1991 have a 55-year minimum term and rent is based on

annual maximums set by HCD and the rents are not adjusted for individual resident incomes. The situation was even more difficult because the tenants referred into the HIP units often had extremely low incomes resulting in significantly lower rents. As a result, the properties were losing money and were unable to meet annual operating needs.

Recently, HIP and Abode requested the City's consent to:

- (a) the transfer and sale of two of the Sites identified as 3456 Calvin Avenue and 1726 Ross Circle, and
- (b) the release of the Affordability Restrictions from the Consolidated Loan Properties recorded on 8-29-90 located at 1794 Donna Lane, 1579 Branham Lane, 1713 Ross Circle, 1731 Ross Circle, and 3825 Barker Drive.

The restrictions listed were to be extended under the terms of the grant but this never occurred. To address this issue, staff has negotiated the recording of two new 55 year restrictions in lieu of the short term restrictions. In addition, to provide an opportunity to retain HIP properties being sold to remain as part of the affordable portfolio, HIP has agreed to market the units to affordable developers before selling the buildings on the market. HIP has also agreed to temporary rent caps, and relocation benefits discussed below that will apply to the Consolidated Loan properties with restrictions that were not extended.

Summary of Key Terms for the HIP Portfolio

The Housing Department has been in negotiations with HIP and Abode and have negotiated new terms for the HIP portfolio. The team worked together to develop several changes that will improve the financial viability of the HIP portfolio. The section below outlines the major terms of the new agreement.

- **Property Sales** - HIP will apply the proceeds from the sale of 3456 Calvin Avenue, and 1726 Ross Circle to pay off the Consolidated Loan made in August of 1990. This loan currently has an outstanding balance of approximately \$806,510.90.
- **Maintaining Affordability** – As a part of the sale of the two properties, HIP will identify a buyer who will continue to operate the sites as an affordable housing site and/or will market the properties to other affordable housing nonprofit agencies for a price 10% below market price prior to accepting an offer from a market rate buyer.
- **Relocation of Existing Residents** – Existing residents for the 3456 Calvin Avenue property will remain living in the property and HIP has agreed to relocate all residents who are currently living at the 1726 Ross Circle site to another affordable site or to another HIP property prior to the sale of the property.
- **Restructure of Rents** – Rents for residents paying 25% of their income may be served one-year rent increase notices transitioning rent structure to rents determined by Area Median Income.

- **Extension of Affordability Restrictions** – As some of the affordability restrictions within the HIP portfolio expire and rescinded, new 55-year affordability restrictions will be placed on the 5668 and 5684 Hoffman Court properties. This will ensure the long-term affordability for these affordable apartments.

Upon approval by City Council, the affordability restriction will be recorded and an agreement regarding the properties will be circulated to HIP for execution. These changes will allow for the financial feasibility of the HIP portfolio in the future.

CONCLUSION

The City of San José has worked with HIP and Abode to find a solution to address the pressing reality that HIP portfolio is not financially feasible. The plan includes the sale of two properties, payment of the existing loan, moving rents from a 25% of income structure to a more typical Area Median Income rents, and rescinding affordability restrictions on some apartments while placing new 55-year restrictions on others. Throughout all of these changes, the City, HIP and Abode will achieve the goal of limiting displacement of current residents and maintaining these affordable homes for future residents. The recommended changes to the HIP portfolio are crafted to meet these goals.

EVALUATION AND FOLLOW-UP

The Housing Department produces a quarterly Information Memorandum regarding the use of the Director of Housing's Delegation of Authority under the Municipal Code; therefore, the final amended City business terms will be summarized in a future Information Memorandum.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

POLICY ALTERNATIVES

In developing the recommendations set forth in this memorandum, the following alternative was considered:

Alternative #1: *Deny the Borrower's request to sell the properties located at 3456 Calvin Avenue and 1726 Ross Circle.*

Pros: These existing affordable housing apartments would remain a part of the HIP portfolio and San José's affordable housing stock.

Cons: The HIP portfolio will remain financial infeasible, forcing Abode to pay for the operations of the HIP portfolio from their own operating expenses.

Reason for not recommending: The financial feasibility of the HIP portfolio and Abode remain a priority allowing for the long-term affordability of the majority of the HIP portfolio.

PUBLIC OUTREACH

This Memorandum will be posted on the City Council Agenda website for the December 15, 2020 meeting.

COORDINATION

Preparation of this report was coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION / INPUT

This item was not heard by the Housing and Community Development Commission, as approvals of affordable development financing do not fall under the functions, powers and duties of the Commission delineated in Section 2.08.2840 of the San José Municipal Code.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *Consolidated Plan 2015-2020*, adopted by City Council on May 5, 2015, to provide homes for very low- and extremely low-income households; and with Goal H-2 of the City's *Housing Element 2014-2023*, adopted by City Council on January 27, 2015, to "increase, preserve, and improve San José's affordable housing stock."

COST SUMMARY/IMPLICATIONS

Approval of the recommended actions would allow the City to receive a payoff of its Consolidated Loan on the properties. No additional City funds are being disbursed for this transaction.

The anticipated revenue will be deposited in the Low and Moderate Income Housing Asset Fund and will be used to fund affordable housing developments.

CEQA

Not a Project, File Nos. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action; and PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/
JACKY MORALES-FERRAND
Director, Housing Department

For questions, please contact Rachel Vander Veen, Housing Deputy Director at (408) 535-8231.

Attachment

ATTACHMENT A

HIP Consolidated Portfolio

PROPERTY A (collectively the “Sites”):

- a) 3456 Calvin Avenue, San José, California+
- b) 1726 Ross Circle, San José, California+
- c) 1794 Donna Lane, San José, California
- d) 1579 Branham Lane, San José, California
- e) 1824 Curtner Avenue, San José, California
- f) 239 Burning Tree Drive, San José, California
- g) 1059 Roewill Drive, San José, California*
- h) 5629 Hoffman Court, San José, California*
- i) 5668 Hoffman Court, San José, California*
- j) 5684 Hoffman Court, San José, California*
- k) 1713 Ross Circle, San José, California*
- l) 1731 Ross Circle, San José, California*
- m) 3825 Barker Drive, San José, California*
- n) 1231 Minnesota Avenue, San José, California*
- o) 247-249 Muirfield Drive, San José, California* No city restriction
- p) 2551 Sesame Court, San José, California* No city restriction