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Title: Resolution to Adopt a Policy Regarding Foreclosures on Affordable Housing Covenant Units

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Resolution to Adopt a Policy Regarding Foreclosures on Affordable Housing Covenant Units
Attached for your review and approval is a resolution to adopt a policy regarding foreclosures on Affordable Housing Covenant Units.

The City currently has Affordable Housing Covenants on three owner properties: Stone School Townhomes, Ashley Mews and Northside Glen. The Affordable Housing Covenants restrict the sales prices of the units so that they are affordable to low and moderate-income homebuyers. The Covenant is subordinate to any institutional lender’s first mortgage lien. The units are permanently restricted except in the case of foreclosures. If a homeowner defaults on his/her mortgage, then the lender has a right to foreclose on the unit and the covenant is terminated. Following is an excerpt from the Covenant on Stone School Townhomes:

14. Partial Subordination of Covenant - Termination of Covenant Upon Foreclosure Sale

The provisions of this Covenant shall be subordinate only to the lien of a first mortgage to secure a loan to purchase the Property made by an Institutional Lender. The first Mortgage shall be deemed a Specified Mortgage and the holder of such mortgage shall be known as the Specified Mortgagee. The City shall have the right to review and approve any mortgage affecting the Property. This Covenant shall not impair the rights of such Institutional Lender, or such lender’s assignee or successor in interest, to exercise its remedies under the first mortgage in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. For any individual unit, with respect to the first mortgage, upon the occurrence of a foreclosure sale, or acceptance of a deed in lieu of foreclosure, this Covenant shall be forever terminated. The mortgagee in such case, or any buyer at the foreclosure sale, will obtain title to the Real Estate free and clear of such Right of First Refusal and Right to Acquire Owner’s Interest, and such rights will not reattach to the Property upon any subsequent sale of the Property.

15. Mortgage Default or Foreclosure

Subject to the following, upon the occurrence of an event of default under the Specified Mortgage (as determined by the Specified Mortgagee-an "Event of Default"), and without the consent of the City, the Specified Mortgagee shall be permitted to accelerate its note, foreclose on the Specified Mortgage, take an assignment in lieu of foreclosure, or exercise its other remedies for default. Further:

- A. Upon the occurrence of an Event of Default under the Specified Mortgage, the Owner shall immediately notify the City of such Event of Default and shall submit to City copies of all notices the Owner received from the Specified Mortgagee relating thereto. Further, the City may notify the Specified Mortgagee's mortgage loan servicer of the lien of the City, and ask such mortgage loan servicer to notify the City of an Event of Default. In such case, the Specified Mortgagee will be agreeable to having its loan servicer provide such notice and work with the City to cure the default.*

- B The Owner and the City agree that, as between them, the City shall have the right, but not the obligation, to cure an Event of Default in the Owner's name and on the Owner's behalf. The Owner shall be responsible to the City for any payments made, and expenses incurred, by the City in curing such default.*

The City has the right to cure the default on the owner's behalf and essentially become the first mortgage lien holder on the property. As Community Development becomes aware of potential foreclosures, we work with the owner, lender, City Attorney, and foreclosure counselors to avoid foreclosure. In the past, foreclosures were prevented from occurring through loan modifications, sales to eligible buyers prior to foreclosure and small emergency assistance loans. There are currently two units at Stone School townhomes for which these preventative measures were not possible, and thus foreclosure could not be avoided. One unit was foreclosed on by Fannie Mae. The second unit's owner passed away and the estate was unable to make mortgage payments and the unit was foreclosed on. Once the unit is foreclosed, the City's Covenant automatically terminates.

Both units are for sale and both units have offers on them that are lower than the amount of the debt on the properties. The City also provided down payment assistance to both of the homeowners, and therefore the City has a second mortgage on the properties. Due to the deflation of housing values, the sales proceeds will be insufficient to pay off the first mortgage in full and therefore insufficient to pay-off the City's second mortgage as well. In both cases, a sale cannot be completed unless the City discharges these mortgages.

In both cases, Community Development has been working with the foreclosing agent to sell the units to low-income buyers. These buyers are also eligible for down payment assistance. In order to preserve these units for the intended purpose of providing permanent affordable housing, Community Development is offering the homebuyers down payment assistance on condition that the homebuyer agrees to the terms of the covenant, thereby reinstating the covenant on the unit.

Community Development does not have the authority forgive loans without approval from City Council for each individual transaction. Due to the time sensitive nature of these transactions, privacy issues, and the administrative nature of these transactions, Community Development is requesting Council approval to adopt a policy giving the City Administrator, or designee, the authority to approve forgiving City loans in order to avoid foreclosure and the loss of permanent covenants on these properties. This policy will enable Community Development to quickly respond to lenders, owners and buyers and to negotiate the highest return on the City's investment.

Prepared by: Jennifer Hall, Community Development Housing Manager

Reviewed by: Mary Jo Callan, Community Development Director and Sumedh Bahl, Community Services Administrator

Whereas, The City has Affordable Housing Covenants on three owner properties: Stone School Townhomes, Ashley Mews and Northside Glen;

Whereas, The Affordable Housing Covenants restrict the sales prices of the units so that they are affordable to low-income homebuyers;

Whereas, The Covenants are subordinate to any institutional lender's first mortgage;

Whereas, The units are permanently restricted except in the case of foreclosures, and if a homeowner defaults on his/her mortgage, then the lender has a right to foreclose on the unit and the covenant is terminated;

Whereas, Community Development has successfully worked with owners to avoid foreclosure, however, occasionally foreclosure is unavoidable;

Whereas, Community Development does not currently have the authority to forgive loans on these properties without specific approval from City Council for each individual transaction; and

Whereas, Due to the time sensitive nature of these transactions, Community Development is requesting that Council authorize the City Administrator, or designee, to approve forgiveness of City loans, when the City Administrator, or designee, determines that loan forgiveness will protect the City's Affordable Housing Covenants;

RESOLVED, That City Council authorizes the City Administrator, or designee, to approve forgiveness of City loans on affordable housing units that have Affordable Housing Covenants, when the City Administrator, or designee, determines that loan forgiveness is necessary to protect the long-term affordability of the housing, and that loan forgiveness will facilitate the transfer of ownership to other income-qualified purchasers;

RESOLVED, That City Council authorizes the City Administrator, or designee, to approve new covenants with substantially the same terms as the current covenants, when new buyers agree to reinstate covenants that have been terminated through foreclosure;

RESOLVED, That the Mayor and City Clerk be hereby authorized and directed to sign any documents consistent with this resolution, subject to approval as to substance by the City Administrator and approval as to form by the City Attorney; and

RESOLVED, That the City Administrator, or designee, be authorized to take necessary administrative actions and to execute any documents necessary to implement this resolution.