301 E. Huron St.
Ann Arbor, MI 48104
http://a2gov.legistar.com/Calendar.aspx

Legislation Text

File #: 11-0544, **Version:** 1

Resolution to Adopt a Policy Regarding Affordable Housing Project Liens
The City of Ann Arbor has a long history of financially supporting affordable rental housing through allocating federal and local funds, approving PILOT's, and through PUD zoning requirements. The City has provided over 70 grants and loans to affordable housing providers over the past 20 years. The City's goal was not to act like a private bank and charge interest to make money off of the loans. The City's goal has been either to add affordable housing stock or to maintain affordable housing for the longest term possible.

When an affordable housing provider requests funding from the City, the City is one funding source out of many. The other funders can include other public entities, non-profits, or private lenders. When the City loans funds, it places a mortgage lien on the property. Twenty years ago, the City provided 20 or 30-year term loans with below-market rate interest (1% - 3%) that were paid off over the term of the loan. The City's lien position was dependent on the other funding sources, but was typically in second or third position, behind private lenders and the State. Private lenders typically had 5-year terms with market rate interest rates (6% - 8%) and public lenders typically had 20-30 year terms with below market interest rates or 0% interest deferred payment financing.

Over time, the housing providers need to refinance their loans: every 5 years for private financing due to the 5 year term, and every 10 - 15 years for public financing due to the need to reinvest in the capital needs of the buildings. Every time a refinancing occurs, the lenders/funders have to renegotiate lien positions, which requires City Council approval if the City's lien position moves. When these refinancings occur, and following Council approval, Community Development and the City Attorney's office have taken the opportunity to revise the term of the City's liens and to update legal documents to the most current versions. Many low-interest 30-year City liens were converted to 99-year, 0% interest, deferred payment liens. These 99-year liens are discharged after 99 years, which effectively converts them to grants. The purpose is to improve the financial stability of the non-profits by eliminating their monthly debt payment, in exchange for a longer- term commitment to maintain the units as affordable housing.

Historically, even though the City's funds were not in first lien position, they were secured by the value of the property. The City often reinvests new federal funds from HUD grants on properties that already had federal or local funds invested in them 15 years before. Some federal funds, such as HOME funds, have minimum affordability period requirements. The affordability period is dependent on the amount of funds invested and ranges from 5 - 20 years. The property must be maintained as affordable housing during the affordability period, otherwise the City must pay the funds back to HUD in full. If the sales proceeds from the property are insufficient to repay the City and hence HUD, then the City is responsible for paying back HUD with general funds. If the property is sold after the minimum affordability period is met, then HUD does not require repayment of the funds. Through refinancing, the property continues to accumulate additional liens and debt, and as long as the property is maintained as affordable housing, there is no risk that the City will need to repay funds to HUD.

This process is now complicated by the fact that the County is now the fiduciary for new City federal funds through the Urban County. The City has mortgage liens on over 30 properties. As those properties age and need reinvestment, the owners (primarily Avalon Housing, Michigan Ability Partners and Community Housing Alternatives) request additional investment from Community Development to rehabilitate the properties. Federal funding is allocated through the County (on behalf of the City) and the County is now responsible for paying back HUD if the housing is not maintained as affordable housing during the affordability period.

The lien position is critical in this situation, because if the property goes into foreclosure or is sold, the first lien is paid off in full, then the second lien etc. until the sales proceeds are depleted. As property values have declined, the lowest lien positions are more likely not to be covered by the value of the property. The lien position is determined by the order the liens are recorded, so that the first lien recorded is in first position etc. Consequently, when the County invests new HOME funds on a property, its lien position is last, behind all the liens before it, unless the other lien holders agree to subordinate to the County, and essentially bump the County to a higher lien position.

Because the County's funds have a HUD affordability period on them, and the City's HUD affordability period has expired, it is critical for the County to have a secured lien position when reinvesting in these properties, whereas it is not as important for the City. The critical issue for the City and the County is that the property maintains its long-term affordability for residents. Currently, Community Development does not have the authority to subordinate the City's lien to the County's lien or discharge the City's lien without Council approval.

The Housing and Human Services Advisory Board recommends that City Council adopt a lien subordination and lien discharge policy that reduces the debt burden on affordable housing properties, ensures that there is always at least one City of Ann Arbor or Washtenaw County lien on the property to preserve the long-term affordable housing units, and enables the housing provider to reinvest in the property with outside funding Following are the policy guidelines:

- At least one City or County lien will be maintained on the property
- Liens with federal affordability restrictions will be in the highest lien position possible
- Liens that do not have federal affordability restrictions will be discharged if needed to facilitate reinvestment of outside funding
- The City Administrator or designee is authorized to approve lien subordinations and lien discharges

Community Development recommends that Council approve this policy to enable Community Development to work with affordable housing providers and other funders and lenders to preserve affordable housing in the City.
Prepared by: Jennifer Hall, Community Development Housing Manager
Reviewed by: Mary Jo Callan, Community Development Director
Sumedh Bahl, Community Services Administrator
Whereas, The City provides funding for affordable housing developments through local and federal funding sources in order to add affordable housing units to the community or to preserve existing affordable housing units;

Whereas, Federal HOME funds must meet a minimum affordability period. If the project is not maintained as affordable housing during the affordability period, the property owner must repay the City. If the property is sold, the housing provider pays off all the liens on the property in lien order, with sales proceeds. If the sales proceeds are insufficient to cover the City's lien, then the City is liable to repay those funds to HUD;

Whereas, The City has liens on over 30 affordable housing properties, and most of those liens do not have affordability period restrictions requiring repayment to HUD because the affordability period has expired;

Whereas, In 2009 the City joined the Urban County and now new federal HOME funds are allocated to affordable housing projects by the County, on behalf of the City. The County is now liable to HUD for these new funds if the project is not maintained as affordable housing during the affordability period;

Whereas, The most important goal is to maintain the housing as affordable, not to receive repayment of federal funds. It is critical to facilitate reinvestment in existing affordable housing projects by leveraging private and public resources. These new investments will not happen if the liens are not protected by the value of the property; and

Whereas, The Housing and Human Services Advisory Board recommends that City Council adopt a lien subordination and lien discharge policy that reduces the debt burden on affordable housing properties, ensures that there is always at least one City of Ann Arbor or Washtenaw County lien on the property to preserve the long-term affordable housing units, and enables the housing provider to reinvest in the property with outside funding. Following are the policy guidelines:

- At least one City or County lien will be maintained on the property
- Liens with federal affordability restrictions will be in the highest lien position possible
- Liens that do not have federal affordability restrictions will be discharged if needed to facilitate reinvestment of outside funding
- The City Administrator, or designee, is authorized to approve lien subordinations and lien discharges

RESOLVED, That City Council authorizes the City Administrator, or designee, to approve forgiveness of City loans or subordination of City loans according to the policy guidelines, when the City Administrator, or designee, determines that loan forgiveness or loan subordination is necessary to protect the long-term affordability of the housing and to enable reinvestment in the property;

RESOLVED, That the Mayor and City Clerk are 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, is authorized to take necessary administrative actions and to execute any documents necessary to implement this resolution.