

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REDEVELOPMENT AGENCY AND THE CITY OF OAKLAND

AGENDA REPORT

2009 DEC 22 PM 5: 54

To: Office of the City/Agency Administrator
Attn: Dan Lindheim
From: Community and Economic Development Agency
Date: January 12, 2010

**Re: Adopt A City Resolution Amending City Resolution No. 80841 C.M.S.
Authorizing Settlement of the Pacific Renaissance Plaza Lawsuit to (1) Extend
the Timeline for Repaying the City's Legal Costs by Twenty-Four Months, and
(2) Allow Resales of Project Units to Households Earning Up to 120% of Area
Median Income**

**Adopt an Agency Resolution Amending Agency Resolution No. 2007-71 C.M.S.
Authorizing Settlement of the Pacific Renaissance Plaza Lawsuit to (1) Extend
the Timeline for Repaying the City's Legal Costs by Twenty-Four Months, and
(2) Allow Resales of Project Units to Households Earning Up to 120% of Area
Median Income**

SUMMARY

The purpose of this report is to seek Council and Redevelopment Agency action to amend the Affordable Housing Agreement between the City/Agency and various other parties entered into in connection with the settlement of the Pacific Renaissance litigation. The Agreement provides for the sale of 50 units at Pacific Renaissance Plaza to homeowners earning less than 100% of Area Median Income (AMI). A portion of the sales proceeds are designated to repayment of the City's legal fees and expenses incurred as part of the original litigation. Due to the dramatic decline in the homeownership market over the last year and a half, sales have been much slower, and sales prices much lower, than anticipated. This has resulted in a slower than anticipated rate of repayment of the City's legal costs.

The actions being requested in this report are to (1) extend the deadline for repayment of the City's expenses (the remaining balance is \$3,755,954.80 due on the \$4,209,730.74 originally incurred) by two years, from the current deadline of December 31, 2009, until December 31, 2011, and (2) to allow the initial purchasers of the units to re-sell to households earning up to 120% of AMI (initial sales are still limited to households earning less than 100% of AMI) to increase the marketability of the units. Both changes have been requested by the East Bay Asian Local Development Corporation, the entity selling the units, due to declining homeownership market. Staff agrees that these requests are reasonable and necessary, and recommends approval.

FISCAL IMPACT

While there is no direct cost to the City/Agency, the proposed amendment, which is necessitated by the weakened housing market, acknowledges the need for a slower repayment schedule than

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anticipated. The Affordable Housing Agreement calls for the City to receive 25% of the net sales proceeds from the units by the East Bay Asian Local Development Corporation (EBALDC) until the \$5.6 million Wells Fargo Bank loan is paid off, then 100% of net sales proceeds until the City's litigation expenses are fully covered. As of early December 2009, \$453,776 has been paid to the City from the proceeds of the sales of eight units, leaving a balance of \$3,755,955 remaining to be repaid. Repayments to the City per the Agreement have not been included in the City's FY09-11 budgets as anticipated revenue, so repayments being received will actually improve the City's cash flow. It is estimated that the City's legal costs will be repaid in full by the sale of the 39th unit, depending on sales prices and which units are sold first.

Originally, it was anticipated that sales of the units would also provide \$3.5 million in revenue to EBALDC for a development subsidy to an affordable rental housing project in Chinatown after the City and Wells Fargo were repaid. Affordable sales prices expected in 2008 before the housing market had fully crashed ranged from \$230,000 to \$379,000 on the one to three bedroom units, while sales prices achieved in 2009 have ranged from \$195,000 to \$339,000 on the eight one and two bedroom units that have been sold so far (see *Attachment A* for sales and repayments to date). Market rate sales prices have also dropped for condominiums City-wide—for example, sales prices on the new, market rate one to three bedroom units at the nearby Eight Orchids development nearby ranged from \$315,000 to \$500,000 in 2008, and from \$265,000 to \$450,000 so far in 2009, with fewer units sold. Thus, the affordable units are being sold for less than the maximum affordable sales price, and it is expected that the excess revenue will be much less than originally anticipated—approximately \$1.7 million if market conditions and the current rate of sales hold constant.

BACKGROUND

On June 18, 1987, the Redevelopment Agency executed an Amended and Fully Restated Disposition and Development Agreement with Pacific Renaissance Associates II (PRA II) setting forth the terms under which PRA II would develop the Pacific Renaissance Plaza, a mixed residential and commercial complex in the 300 block of Ninth Street in downtown Oakland. To assist PRA II with the construction of Pacific Renaissance Plaza, the Agency provided PRA II with a \$7 million loan. Repayment of the loan was to be made in accordance with the DDA and the terms of the loan documents.

Under the DDA, PRA II or its successor was required to maintain 50 residential condominiums at Pacific Renaissance Plaza as affordable rental housing units for a minimum period of 10 years after their construction, or longer if it was financially feasible to do so. In February 2002, the then-owner, International Hotelier Management Corp (IHMC), informed the Agency that it was not economically feasible to maintain the 50 units as affordable rental housing beyond the minimum 10 year period specified under the DDA. They also indicated that they would terminate the tenancies of the units' occupants unless the Agency purchased the units at a price calculated under applicable DDA provisions. In April 2003, after the Agency declined to

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purchase the units, IHMC subsequently terminated almost all of those tenancies and initiated eviction proceedings against some of the tenants.

Following the evictions, the tenants (the “Hom Plaintiffs”) brought suit against IHMC and PRA II. The City and Agency joined the lawsuit, and incurred approximately \$4.2 million in outside counsel legal fees and expenses in connection with the litigation.

On September 18, 2007, the City and Agency approved via Resolutions No. 80841 C.M.S. and No. 2007-71 C.M.S., respectively, a settlement of the Pacific Renaissance Plaza litigation. The terms of the settlement were set out in three related agreements: a Purchase and Sale Agreement between EBALDC's affiliate (PacRen Affordable Sales, LLC) and IHMC; an Affordable Housing Agreement among the City, the Agency, the Hom Plaintiffs, and EBALDC's affiliate; and a Settlement and Release Agreement among the City, the Agency, the Hom Plaintiffs and the defendants in the litigation.

The revised settlement called for IHMC to sell 50 residential units and related parking in Pacific Renaissance Plaza to EBALDC or its affiliate for a price of \$4 million, financed with a loan from Wells Fargo Bank secured by the property. EBALDC's affiliate was to rehabilitate and resell as soon as possible 49 of the units at an affordable price to households with incomes at or below 100% of area median income, with a preference for households at or below 80% of area median income. The units are subject to resale restrictions recorded on the units for 45 years restricting resale of the units only to households at or below 100% of AMI at an affordable price. One of the units was to be held in a lease for the rest of the remaining tenant's life, and thereafter also sold by EBALDC, subject to the same resale restrictions—that tenant recently died at the age of 100, and EBALDC will prepare to sell the unit. The proceeds from the sale of the units would go first to repay Wells Fargo and the City, as noted above, then would be set aside as a development subsidy for an affordable rental project in Chinatown.

KEY ISSUES AND IMPACTS

The real estate market has declined significantly since the Affordable Housing Agreement was reached. EBALDC's affiliate purchased the units on December 17, 2007, and spent the next 18 months and \$1.6 million to coordinate tenant relocation efforts and the rehabilitation of the units.

EBALDC and its agents began marketing the units in the spring of 2009. By that time, the ownership housing market had declined precipitously since the Agreement was executed in 2007. Hundreds of competing market rate condo units without any affordability restrictions have entered the Downtown/Chinatown markets at prices approaching the affordable sales prices originally contemplated at Pacific Renaissance Plaza. In addition, mortgages have been more difficult to obtain for potential homebuyers.

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Tenants also had the first right of refusal to purchase their units at Pacific Renaissance Plaza. None of the previous tenants ended up purchasing the affordable units, but EBALDC provided downpayment assistance to several as part of the relocation agreement, and they purchased units elsewhere. EBALDC has made extensive efforts to market and sell the units—including advertising billboards and newspaper advertisements, and marketing to senior centers, public schools, and EBALDC rental tenants—but sales have been slower than expected back in 2007, averaging one unit per month between May and November 2009.

EBALDC's request is two-pronged. First, they have requested to extend the repayment period on the City's litigation expenses to provide the additional time needed to sell the remaining units.

Secondly, they have proposed to increase the maximum household income limits on resale of the units to 120% of Area Median Income (AMI). Initial sales are still limited to households earning less than 100% AMI, but the 120% AMI restriction on resale is intended to help make current buyers/lenders more comfortable that they will be able to achieve modest gains on resales further down the road (at least 5-10 years out) once housing prices recover. (Note: Currently, sales prices affordable to households earning up to 120% of AMI would be higher than market rate sales prices, lessening the likelihood of units being flipped for a quick profit by the initial homebuyers.) The Hom Plaintiffs' representatives have approved these changes.

EBALDC is not in a financial position to repay the full amount due, and any attempt to collect the remaining balance immediately would endanger the health of the organization and its affordable housing portfolio, which is not a desired outcome. Either way, it will take longer to have these costs repaid, due to changes in the market that are out of control of EBALDC and the City. EBALDC is making headway in selling the units in a difficult market. Staff therefore recommends continuing with EBALDC handling unit sales on an extended repayment schedule.

Update on Prospective Buyers and Timing of Sales Progress

As of the writing of this report in early December 2009, eight units have been sold to qualified buyers at an average sales price of \$244,875. To date, \$453,776 of the City's \$4,209,731 in litigation costs have been repaid. Repayments to the City will escalate once Wells Fargo's loan is paid off—to date, \$1.36 million of Wells Fargo's loan has been repaid. It is still anticipated that the City will be fully repaid its litigation costs once the units are sold, but it is also believed that the unit sales will not generate as much money for affordable rental development as originally anticipated, as described above.

MetroBay Realty (MBR), which is handling the marketing of the properties, opened their onsite office in late March to market the units at Pacific Renaissance Plaza. In the initial month, there were a large number of tours and new applicants as a result of the pent up demand and curiosity about the units, but this initial curiosity dropped off quite a bit in the months to come.

Tours and Sales At Pacific Renaissance Plaza By Potential Homebuyers

	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Unit Tours	212	110	78	77	77	41	58	Not Available	Note: report was drafted early December 2009. Update will be given to Committee in January 2010.
New Apps	20	4	3	1	3	1	2	1	
Sales	0	2	1	2	0	1	1	1	

EBALDC anticipates very few sales during the winter months, a traditionally slow time of year. It is hoped that the two homebuyers currently in contract will close by the end of January. Starting in February 2010, EBALDC intends to re-launch Pacific Renaissance Plaza marketing and sales and feature prominently the loosened sales restrictions (if approved), and set timelines that coincide with the expected extension of the homebuyer tax credit extension. By June 2010 (the end of the tax credit extension period), they aim to have 25 of the 50 units in contract.

SUSTAINABLE OPPORTUNITIES

The revised agreement will address the “3 E’s” of sustainability in the following ways:

Economic: These projects have expanded the affordable housing inventory in Oakland for moderate income homebuyers. Any excess funds generated for affordable rental housing development will provide affordable rental housing for very low income households, and provide construction and on-going maintenance/management jobs. In addition, the repayment of legal expenses to the City Attorney’s Office will help alleviate the City’s serious General Fund deficit over the next few years, potentially saving City services and jobs.

Environmental: The project has rehabilitated existing housing in close proximity to a wealth of public transit and services, enabling residents to reduce dependency on automobiles and further reduce any adverse environmental impacts of development. The renovations to date have used green materials such as low VOC paints and resilient tile where appropriate.

Social Equity: Affordable housing is a means of achieving greater social equity. The units provide ownership housing for low and very low-income senior citizens and families in a fairly expensive market in Chinatown. The additional funds for affordable rental housing will help towards the replacement of the 50 affordable rental units.

DISABILITY AND SENIOR CITIZEN ACCESS

Many of the units sold so far have been sold to relatively low income seniors. Furthermore, developers were required to devise a strategy to effectively market housing units to the disabled community and present this strategy in their Affirmative Fair Housing Marketing Plan.

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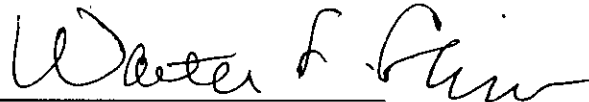
RECOMMENDATIONS AND RATIONALE

The actions being requested in this report are to extend the deadline for repayment of the City's litigation expenses by two years until December 31, 2011, and to allow resale of the units to households earning up to 120% of AMI (initial sales will still be limited to households earning less than 100% AMI). The first change will provide sufficient time for the repayment of the City's legal fees, given the slowdown in sales and lower prices. The second recommendation is intended to help boost sales of the units by making prospective buyers and lenders more comfortable that they will be able to achieve modest gains on resales further down the road (at least 5-10 years out) once housing prices recover a bit.

ACTION REQUESTED OF THE CITY COUNCIL/REDEVELOPMENT AGENCY

Staff recommends that the City Council/Redevelopment Agency approve the attached City Resolution amending City Resolution No. 80841 C.M.S. and the attached Agency Resolution amending Agency Resolution No. 2007-71 C.M.S., to extend the timeline for repaying the City's legal costs by twenty-four months, and allow resales of units to households earning up to 120% of AMI.

Respectfully submitted,




Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Jeffrey P. Levin, Acting Deputy Director
Housing and Community Development

Prepared by:
Christia Mulvey, Housing Development Coordinator
Housing and Community Development Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



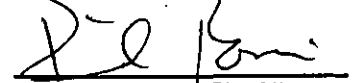
Office of the City/Agency Administrator

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Community and Economic Development Committee
January 12, 2010

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Approved as to form and legality


Deputy City Attorney

2009 DEC 22 11:54
RESOLUTION No. _____ C.M.S.

A RESOLUTION AMENDING CITY RESOLUTION NO. 80841 C.M.S. AUTHORIZING SETTLEMENT OF THE PACIFIC RENAISSANCE PLAZA LAWSUIT TO (1) EXTEND THE TIMELINE FOR REPAYING THE CITY'S LEGAL COSTS BY TWENTY-FOUR MONTHS, AND (2) ALLOW REALES OF PROJECT UNITS TO HOUSEHOLDS EARNING UP TO 120% OF AREA MEDIAN INCOME

WHEREAS, the City was a party to a lawsuit, *The City of Oakland, et al. v Pacific Renaissance Associates II, et al.*, Alameda County Case Number RG 03111924 and related cases; and

WHEREAS, the lawsuits concerned Pacific Renaissance Plaza, a mixed commercial and residential complex on 9th Street between Franklin and Webster; and

WHEREAS, Council Resolution No. 80841 C.M.S., adopted on September 18, 2007, authorized settlement of the lawsuits; and

WHEREAS, the settlement involved, among other things, the purchase, rehabilitation, and sale of 50 units at Pacific Renaissance Plaza by the East Bay Asian Local Development Corporation or its affiliate ("EBALDC") as affordable ownership housing, and reimbursement of the City's legal costs from sale proceeds; and

WHEREAS, the settlement terms provided, among other things, that EBALDC reimburse the City for the City's litigation costs no later than December 31, 2009; and

WHEREAS, the settlement terms provided, among other things, that initial sale of units to homeowners and subsequent resales of units during the 45-year affordability period be limited to households at or below 100% of Area Median Income; and

WHEREAS, actual legal fees and expenses incurred by the City for the litigation totaled \$4,209,730.74, of which \$453,775.95 has been repaid through unit sales proceeds as of December 1, 2009; and

WHEREAS, although homeownership market conditions have declined steadily since the settlement agreement was authorized in September 2007, EBALDC has made steady progress in selling the units; now, therefore, be it

RESOLVED: That Resolution No. 80841 C.M.S. is hereby amended to (1) extend the timeline for repaying the City's legal costs by 24 months, and provide that EBALDC shall reimburse the City for the City's legal costs in the Pacific Renaissance litigation no later than December 31, 2011, and (2) allow resales of the affordable housing units at Pacific Renaissance Plaza after the initial sale to homebuyers to households earning up to 120% of Area Median Income, although the initial sale of such units will continue to be restricted to households at or below 100% of Area Median Income; and be it further

RESOLVED: That the City Administrator is hereby authorized to negotiate and execute amendments and other documents and take whatever other action is necessary with respect to the implementation of the settlement consistent with this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
PRESIDENT BRUNNER

NOES -

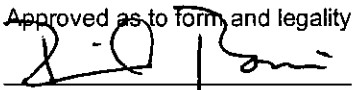
ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

2009 DEC 22 PM 5:55

Approved as to form and legality

Agency Counsel

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

**AN AGENCY RESOLUTION AMENDING AGENCY RESOLUTION
NO. 2007-71 C.M.S. AUTHORIZING SETTLEMENT OF THE PACIFIC
RENAISSANCE PLAZA LAWSUIT TO (1) EXTEND THE TIMELINE
FOR REPAYING THE CITY'S LEGAL COSTS BY TWENTY-FOUR
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WHEREAS, the settlement terms provided, among other things, that initial sale of units to homeowners and subsequent resales of units during the 45-year affordability period be limited to households at or below 100% of Area Median Income; and

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RESOLVED: That the Agency Administrator is hereby authorized to negotiate and execute amendments and other documents and take whatever other action is necessary with respect to the implementation of the settlement consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California