



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2014 MAY 29 AM 11:46 **AGENDA REPORT**

TO: FRED BLACKWELL
CITY ADMINISTRATOR

FROM: Michele Byrd

SUBJECT: Modification of MAP Loans with Resale Restrictions **DATE:** May 13, 2014

City Administrator

Date

Approval

5/27/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff requests that the City Council approve:

A Resolution Authorizing Modifications to the Repayment Terms for First-Time Homebuyer Mortgage Assistance Program Loans Funded after April 2001 on Resale Restricted Properties to Allow Loan Assumption and Limit Recapture to a Share of Appreciation, and Amending the Consolidated Plan for Housing and Community Development to Provide for these Modifications

EXECUTIVE SUMMARY

A resolution has been prepared to authorize future and retroactive modification to the repayment terms of loans made after April 2001 under the City's First-Time Homebuyer Mortgage Assistance Program (MAP) in which the properties also have long-term affordability agreements or resale controls that limit appreciation. Modification of the loan terms is requested because the MAP loans are accruing interest at a faster rate than the properties appreciate, leaving the homeowner with little to no equity.

Staff is proposing the following modification on the applicable transactions:

1. Change the loan recapture from accrual of 3% simple interest to an appreciation share proportional to the City's investment in the transaction.
2. Allow for the principal to be assumable by subsequent buyers to ensure that the properties can be sold to low-income first-time homebuyers for the term of the affordability controls.

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The proposed changes will reduce the City's recapture but will ensure that both the homeowner and the City receive an equitable portion of the appreciation while preserving the affordability controls that are in place.

OUTCOME

Approval of the resolution will allow modification of the repayment terms for the First-Time Homebuyer Mortgage Assistance Program for transactions that include long-term affordability agreements that restrict the resale price and provide limited equity to the owner upon resale. The proposed modifications will limit the City's recapture to an equitable portion of the property appreciation and provide that upon resale, the property will be affordable to a low-income first-time homebuyer.

In addition, there is one specific property under resale controls of the Northern California Land Trust (NCLT) that is up for sale this summer that received a MAP loan. Under current terms, the seller appears to be underwater and the transaction may need to short sale. Approval of the proposed modification will most likely enable the property owner to break even.

BACKGROUND/LEGISLATIVE HISTORY

The First-Time Homebuyer Mortgage Assistance Program (MAP) was established July 27, 1993 by Resolution No. 70274 C.M.S. The purpose of the program was to promote neighborhood stabilization and revitalization through homeownership opportunities for low to moderate income citizens who historically had been underserved by major commercial lenders and the real estate community. Program guidelines were based on requirements established by the Federal HOME Investment Partnership Program, from which the initial funds to implement the program were obtained.

Beginning in FY 1995-96, the program was partially funded with Redevelopment Agency Low and Moderate Income Housing Funds.

Over the years the City Council approved many changes to meet the needs of the changes in the housing market. On February 27, 2001, the City Council by Resolution No. 76302 C.M.S approved several changes to the MAP program to meet the needs of the changed market conditions and to offer viable home buying options to low and moderate income homebuyers. As reported at that time, the changes to the program were not consistent with the requirements of the HOME program and funding from HOME was discontinued and replaced with funding from the Redevelopment Agency. Among those changes, the City Council authorized an increase in the maximum loan amount (to \$50,000) and a change from the original "equity sharing" provisions with forgiveness after twenty years to deferred loans at three percent (3%) simple interest with no forgiveness. In 2005, the City Council has approved two other changes to the program to

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keep up with current market conditions. The maximum purchase price was increased to 95 percent of the median sales price of a home in Oakland (the current limit is \$456,000) in order to ensure that purchase price limits keep pace with increases in market prices. On July 19, 2005, the City Council approved a recommendation to increase the maximum loan amount to \$75,000 to keep pace with rapidly escalating home prices. On May 5, 2009, the City Council by resolution No. 81960 approved a recommendation to increase the income limits to 100% of the Area Median Income. On September 21, 2010, the City Council by Resolution No. 82989 approved an increase of the purchase price limits to an amount equal to a sales price that is affordable for households earning 100% of the Area Median Income.

One of the primary goals of the City's homeownership programs is to provide low income homebuyers with the opportunity to build equity and develop a financial stake in the community. The program was restructured in 2002 with the intention that the homebuyer would benefit from market rate appreciation with limited and reasonable recapture from the City of Oakland. The new terms required the owner to pay the city the principal plus 3% simple interest at the time of sale or the end of the 30 year term. When home prices were at their highest, many transactions were structured using multiple resources to make the homes affordable to low-income purchasers. Some of those transactions combined deferred interest loans including the City's MAP loan and a long term affordability agreement that restricts resale price.

ANALYSIS

While market rate properties are starting to see recovery, the resale price restricted properties with deferred interest loans are either still underwater or have stagnant equity growth. This is because the interest on the City of Oakland loans is increasing at the same or greater rate than the properties have appreciated.

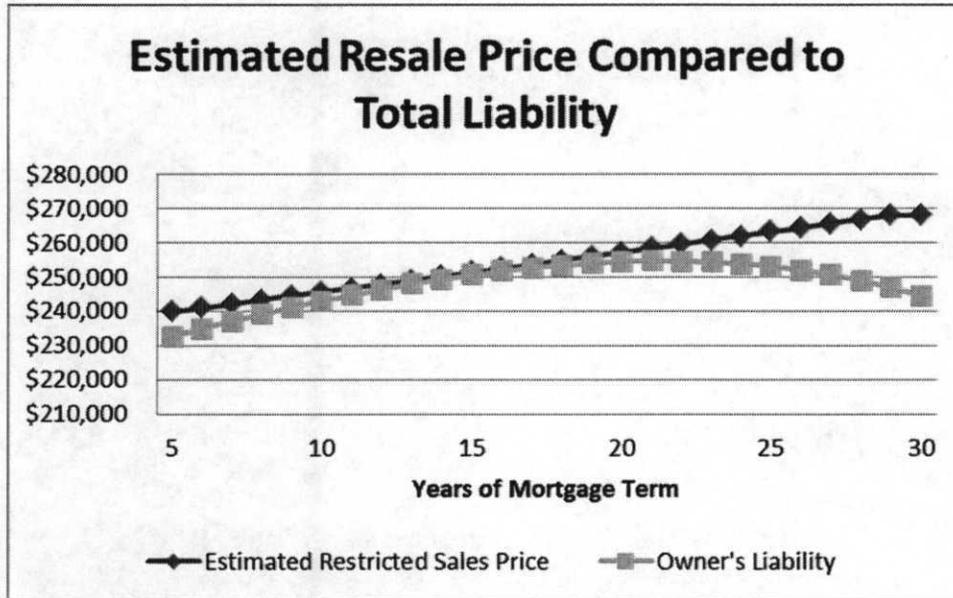
Staff has reviewed analysis of equity projections of Northern California Land Trust (NCLT) properties that received MAP loans. It has been determine that over the 30 year term of the MAP loan, most of the owners will have negative or stagnated appreciation and will be faced with a sizeable balloon payment at the end of the term of the City's loan. In the worst case scenario, at the end of 30 years, one of the homeowners would owe the City \$158,604. Relative to the projected resale price and including other deferred loans, this particular owner would owe 91% of the home's value in loans and repayment to the City may not be feasible. Other owners would invest in their property for 30 years and only manage to maintain an equity position of 9% of the value of the home. It is anticipated that other price restricted properties will face similar issues.

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The chart below compares the estimated resale price to the combined loan-to-value over the remaining term of the City's loans



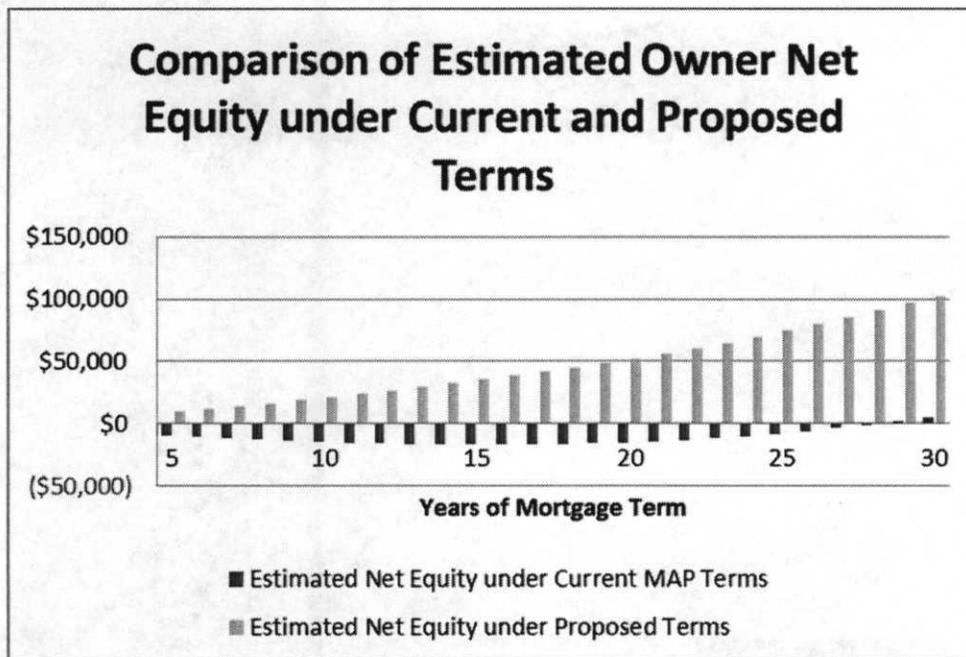
In the above chart, during most of the life of the loan, the owner owes as much as the property is worth. This will limit the owners ability to sell or refinance. Based on this example the owner would have to pay closing costs out of pocket in order to sell the property and would most likely have to sell their property to payoff the City's MAP loan at the end of the 30 years term since there is not enough equity to cover the amount due.

An additional challenge that property owners would face upon resale is that purchaser would need substantial downpayment assistance in order to sell their homes at the maximum resale price. Purchasers who meet the income limits required by the resale controls would need a substantial down payment to be able to afford the maximum sales price. If they do not have the cash to invest in the purchase of the property, they would be dependent on the availability of downpayment assistance. If they are able to find a buyer that meets income limit criteria and qualifies for sufficient downpayment assistance, the transaction would be upside down leaving the owners with no option but to pursue a short sale of the property.

Although it is the intention of these resale restricted properties maintain a long term affordable housing cost that survives resale and provide limited return to the owner, it was not anticipated that these transactions would become burdensome to the owners. The unfortunate consequence of the combination of a restricted resale price with deferred mortgage loans is that the owners will have all the responsibilities of homeownership and none of the benefits.

In order to mitigate the loss to the homeowner and the potential loss to the City if a short sale is required, Staff proposes to modify the loan terms to make the transaction equitable for both parties. Proposed modifications include allowing assumption of the principal amount of the loan and change recapture terms of the loan from accruing interest to shared appreciation. Allowing assumption of the loan principal of the MAP loans will enable the owner to sell their homes at maximum resale price to a household that meets in targeted income criteria. Changing the recapture to shared appreciation will ensure that the City's recapture is relative to appreciation. A proportion will be established based on the City's investment in the transaction compared to the purchase price. Under this model, owners would recapture initial investment, principal payments and their percent share of limited appreciation. The City would recapture its share of appreciation and either recapture the entire principal or if assumed, reinvest the principal in a new low-income first-time homebuyer purchasing the associated property.

The chart below compares and estimated net equity projection of a homeowner under the current loan terms to the estimated equity under the shared appreciation model.



Note: Equity includes equity from principal payments and estimated appreciation.

The above chart illustrates that after 30 years of payment the first mortgage (\$89,000), under current terms, the owner would have less than \$5,000 net equity in the property. Modification of the repayment terms would allow owner to build equity through payment of the principal on the first mortgage and modest share of appreciation estimated to be \$13,000. Total estimated equity to the owner after 30 years would be \$102,000.

PUBLIC OUTREACH/INTEREST

Northern California Land Trust (NCLT) contacted City staff due to concerns that the deferred MAP loans with accruing interest were causing undue hardship to their homeowners upon resale. Additionally, they were also concerned that a homeowner's ability to sell was contingent on the availability of limited funds for the City of Oakland First Time Homebuyer Loans.

NCLT units are permanently affordable through the limited appreciation re-sale restriction recorded in the 99- year land lease governing their occupancy and resale. A recent sale brought attention to this issue. Through their analysis, they determined that these loans could cause hardship to the owners for the entire term of the loan since the interest accrues at the same rate as appreciation.

COORDINATION

Housing staff has contacted the City Attorney's Office to determine if proposed changes are feasible under the terms of the funding sources used. Additionally, Housing staff will be working with the City Attorney's Office to review resolutions and any modifications to the promissory note and deed of trust. This report and resolution have been reviewed by the City Attorney's Office and by the Budget Office

COST SUMMARY/IMPLICATIONS

The precise fiscal impact of this change is difficult to predict because it is not known to what extent the modification will affect borrowers' decisions to sell their homes or pay off the loan early. There are a minimum of eight loans that could qualify for modification under the new terms. There are currently 868 MAP loans in the City's portfolio. Over the long run, the amount of money received by the City could be reduced because the purpose of these changes is to give borrowers a greater share of appreciation, but because the number of loans that need to be modified is small, the impact will be minimal.

There is no immediate impact on the City's budget. The FY 2013-15 budget does not include an appropriation for the anticipated repayments. Instead, pursuant to City Council Resolution No. 77654 and Redevelopment Agency Resolution No. 2003-05, the funds are appropriated only as they are actually received. For this reason, no modification to the City's budget is required as a result of this resolution.

SUSTAINABLE OPPORTUNITIES

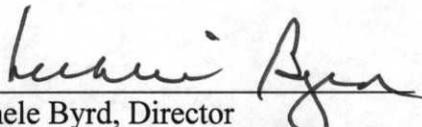
Economic: The City's homeownership programs provide long term opportunities for low income families to build equity. The proposed changes would allow low income families to keep a larger share of appreciation in their homes thus building up more equity. First time homebuyer assistance creates fewer jobs than either housing rehabilitation or housing development, which expand employment for construction and permanent jobs.

Environmental: There are no environmental opportunities or consequences as a result of the proposed changes.

Social Equity: The current provisions of the MAP program are an obstacle to opportunities for City-assisted low income homebuyers. The proposed changes would make it easier for these homeowners to build equity and would create more housing choices for these families.

For questions regarding this report, please contact Norma Thompson, Housing Manager, at 510-238-7137 or Christina Morales, Housing Development Coordinator, at 510-238-6984.

Respectfully submitted,

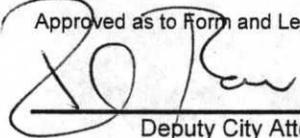


Michele Byrd, Director
Department of Housing and Community Development

Reviewed by:
Norma Thompson
Manager, Housing Development

Prepared by: Christina Morales
Housing Development Coordinator
Housing Development Services

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Approved as to Form and Legality

Deputy City Attorney

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AUTHORIZING MODIFICATIONS TO THE REPAYMENT TERMS FOR FIRST-TIME HOMEBUYER MORTGAGE ASSISTANCE PROGRAM LOANS FUNDED AFTER APRIL 2001 ON RESALE RESTRICTED PROPERTIES TO ALLOW LOAN ASSUMPTION AND LIMIT RECAPTURE TO A SHARE OF APPRECIATION, AND AMENDING THE CONSOLIDATED PLAN FOR HOUSING AND COMMUNITY DEVELOPMENT TO PROVIDE FOR THESE MODIFICATIONS

WHEREAS, the First-Time Homebuyer Mortgage Assistance Program (MAP) assists low and moderate income first time homebuyers to purchase homes in Oakland by providing deferred loans, thereby generating more private mortgage lending activity and increased awareness of existing City and local housing programs and opportunities; and

WHEREAS, loans made after April 2001 had repayment provisions requiring payment of principal and 3% simple interest per annum due upon transfer or the end of the 30 year term; and

WHEREAS, some homes purchased with these loans have long term affordability controls that restrict the resale price and limit appreciation; and

WHEREAS, the rate of appreciation on the price restricted homes is similar to the accrual of interest on differed MAP loans preventing the owner from gaining equity in the property; and

WHEREAS, the City wishes to retroactively modify the repayment provisions of these loans with resale price restrictions to permit borrowers to retain, when feasible, equity gained through principal payment and a percent of net appreciation established by a proportion of the City's investment in the transaction; and

WHEREAS, modifications to the terms of loans made with federal American Dream Down Payment Assistance (ADDI) funds must be enacted through an amendment to the City's adopted Consolidated Plan; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator or his or her designee to retroactively modify the terms of MAP loans funded after April 2001, in cases where the property has long term affordability controls in place that restrict resale price, to allow for the assumption of the loan upon resale with recapture to the City limited to an appreciation share proportionate to the City's investment; and be it

FURTHER RESOLVED: That MAP loans on future transaction with long term affordability controls that restrict resale price and provide for limited appreciation shall be made assumable with recapture to the City limited to an appreciation share proportionate to the City's investment; and be it

FURTHER RESOLVED: That the City Council hereby adopts an amendment to the City's Consolidated Plan for Housing and Community Development for 2004 – 2013, including any Action Plans adopted pursuant to the Consolidated Plan, to reflect this modification to the MAP; and be it

FURTHER RESOLVED: That the City Council hereby appoints the City Administrator and his or her designee as agent of the City to take any action necessary to prepare and execute documents, administer the changes to the MAP loan repayment terms, submit to HUD an amendment to the Consolidated Plan, and take any other necessary action consistent with this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California