CITY OF OAKLAND

# AGENDA REPORT

| | | | |
|---|---|---|---|
| **TO:** | Jestin D. Johnson<br>City Administrator | **FROM:** | Emily Weinstein<br>Director, HCD |
| **SUBJECT:** | Affordable Housing Extension Authorization | **DATE:** | February 29, 2024 |

City Administrator Approval Jestin Johnson (Mar 11, 2024 15:20 PDT) Date: Mar 11, 2024

## RECOMMENDATION

**Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Extend The Terms Of Expiring Affordable Housing Loans And Regulatory Agreements By Up To Fifty-Five Years, And To Amend Loan Documents To Reflect Current City Policies And Standards.**

## EXECUTIVE SUMMARY

The City of Oakland (City) has issued residual receipts loans to more than 130 affordable housing projects over the past 40 years, including 10 loans that will be due and payable on or before 2030. In connection with the loans, since the early 1990's, regulatory agreements are executed restricting all or some units for rent to low, very low, extremely low, or moderate-income tenants. When these loans and regulatory agreements expire, project owners typically request an extension, which usually requires Council approval. The City has regularly approved these extensions, as they preserve long-term project affordability, and ensure the stability of the projects over time. Over the past few years, staff have sought Council approval of each extension on a one-off basis. To streamline the process, staff is currently seeking blanket authority to extend the terms of loans and regulatory agreements by up to fifty-five years as needed, and to modify agreement terms to mirror current City standards, which may be updated from time to time. Any additional funding for projects would still require approval by City Council.

## BACKGROUND / LEGISLATIVE HISTORY

The City has executed loan and regulatory agreements to more than 130 projects over several decades. Most older agreements had term lengths of thirty years, meaning that a number of agreements executed in the 1990s will expire by the end of the decade. Loans prior to the early 1990's often had affordability terms embedded in an unrecorded Loan Agreement, rather than a recorded regulatory agreement.

Loans to affordable housing developments are structured as residual receipts loans, repaid only to the extent there is cash remaining after the payment of operating expenses, reserve deposits, and debt service. This structure leaves large City loan balances on the books of each development, hence the requirement to amend and extend the loan agreements at the end of the term. By allowing the project owner to extend the agreement, the City can continue to receive residual receipts loan payments, and project financial stability can be maintained.

A list of projects with loans and regulatory agreements set to reach the end of their term by December 31, 2028 (i.e., within the next five years) is listed in **Attachment A**.

City Council has previously adopted resolutions extending the term lengths of individual projects in recent years. These projects are listed below in **Table 1**.

**Table 1. Project Loan and Regulatory Agreement Amendments Authorized by City Council Since 2016**

| Project Name | Address | Council District | Resolution No. | Resolution Date |
|---|---|---|---|---|
| Hamilton Apartments | 2101 Telegraph Avenue | 3 | 88967 C.M.S. | 12/21/2021 |
| United Together Manor | 9410 MacArthur Boulevard | 7 | 88693 C.M.S. | 06/15/2021 |
| Madison Park Apartments | 100 9th Street | 2 | 2018-014 (ORSA) | 10/30/2018 |
| San Pablo Hotel | 1955 San Pablo Avenue | 3 | 87268 C.M.S. | 7/10/2018 |
| Madrone Hotel | 477 8th Street | 3 | 86093 C.M.S. | 4/5/2016 |

City Council has approved each resolution unanimously on the consent agenda.

**Table 2. Projects have reached the end of their loan term and have requested extensions.**

| Project Name | Address | Council District | Expiration |
|---|---|---|---|
| Hugh Taylor House | 1935 Seminary Avenue | 6 | 55 years |
| Adcock-Joyner Apartments | 532 16th Street | 3 | 35 years |

Instead of submitting two additional individual resolutions for these projects, staff have prepared this resolution granting authority to extend loans and regulatory agreements on a more routine and systematic basis, which will streamline the approval process, ensure regulatory agreements are brought to current City standards, and guarantee long term affordability is preserved for tenants.

## ANALYSIS AND POLICY ALTERNATIVES

### Analysis

Approving a streamlined administrative process for extensions to affordable housing loans and regulatory agreements will support the Citywide priority of promoting **housing, economic, and**

**cultural security** through the preservation and extension of affordability terms for City-assisted affordable housing projects. By reducing the number of Council resolutions required for routine business, it will have the added benefit of increasing staff capacity that may be reallocated to other critical tasks in affordable housing development.

In addition to a straightforward extension of affordable housing loans and regulatory agreements, HCD seeks authority to update the terms of such agreements to reflect current City standards. This is recommended as a way to make City agreements more consistent and reflect current best practices. City agreements are continually refined and tweaked by HCD staff and the Office of the City Attorney, with analysis and input from third-party consultants as to industry standards.

Some key updates to the City's loan and regulatory agreement terms over the last twenty-five years include the following:

- Extending the term length by up to 55 years

  Both the loan and the regulatory agreement would be extended concurrently by up to 55 years, which is the current industry standard for affordable housing in California. Staff shall only extend loan terms if the regulatory restrictions are being extended concurrently. In previous decades, such agreements were commonly only issued for a term of 30 years.

- Reducing the loan interest rate from 6% to 3%

  In approximately 1999, the City lowered its standard lending interest rate from 6% to 3% on affordable housing loans, to reflect lending interest rates at the time. Loan terms are simple (non-compounding) interest, with payments from cash flow (residual receipts) rather than amortized debt. The City has maintained this 3% rate as a general standard for more than 20 years. Older projects that seek loan extensions will likely wish to reduce their interest rate to 3% to reflect current standards. Since these are residual receipts loans that are rarely repaid in full, the material impact of this change to both the City and borrowers is relatively minor.

- Adding a monitoring fee

  Monitoring fees for affordable housing were introduced as a standard provision in City-assisted affordable housing regulatory agreements in approximately 2016, pursuant to the City's Master Fee Schedule. Older projects without the applicable provision may not be assessed monitoring fees. As project regulatory agreements are amended and extended, the monitoring fee provision will be inserted. The current monitoring fee for City-assisted projects is a base rate of $610 per project, plus a per-unit fee of $8 annually, pursuant to the 2023-24 Revised Adopted Master Fee Schedule, adopted by Council on June 20, 2023 through Ordinance No. 13698 C.M.S., as amended by Ordinance No. 13747 C.M.S. The Master Fee Schedule may be accessed here: https://www.oaklandca.gov/documents/city-of-oakland-master-fee-schedules.

- Updating requirements for annual deposits to reserve accounts

The City requires that projects set aside money in a replacement reserve account, with expenditures subject to HCD staff's review and approval. The replacement reserve may be spent on a wide range of capital improvements, such as installing new flooring or repairing an elevator. Some older City regulatory agreements do not include any such requirements for replacement reserves, whereas other agreements set a prohibitively high requirement that would now amount to hundreds of thousands of dollars in annual deposits per project. Current City policy sets a maximum replacement reserve deposit amount of $500 per unit per year, which is consistent with standards set forth by other public agencies.

Projects are also required to set money aside into an operating reserve account, for use in the case of operating shortfalls. Requirements for operating reserve deposits may similarly be updated to reflect current standards. Based on the recommendation of a third-party consultant, the City recently reduced its operating reserve requirement from six months of operating expenses to three months of operating expenses. However, the City will retain discretion to continue to require six months of operating reserves based on the historical performance and needs of each property.

- Updating the residual receipts payment structure

Older City promissory notes typically require that 100% of surplus cash be used to repay the City loan. In other words, if a project turned a profit each year, the full amount of the profit was required to be repaid to the City. While well-intentioned, this policy created little incentive for borrowers to manage projects in a cost-effective manner. Instead, borrowers had an incentive to inflate operating costs so as to retain all revenue within projects.

In the early 2010s, the City revised its policy to require fifty percent (50%) of surplus cash to be used to repay the City loan, with the remaining half being distributed to borrowers as an "incentive management fee." Staff has found that this more effectively aligns the goals of the City and borrowers to manage properties in a cost-effective manner and repay the City loans to the extent possible.

- Updating the insurance requirements

The City has continually refined its insurance requirements, and an extension of the loan term would allow the City the opportunity to apply the most current requirements. This would offer greater protection to both the City and the projects in the case of disaster.

- Additional fees (not eligible for modification)

The City allows various fees to be paid to the owners or sponsors of City-assisted projects, including a deferred developer fee, an asset management fee, and a partnership management fee. These fees are only payable to the extent that surplus funds are available after providing for the basic operations and debt service of the project. This resolution shall not be construed as granting authorization to modify the schedule or amount of any such fees.

The City's current terms are spelled out in more detail in its Notices of Funding Availability (NOFAs) that are published on the City's website, accessible here: https://www.oaklandca.gov/resources/nofa-opportunities

Under the proposed resolution, the City Administrator and staff would retain discretion to approve or deny extensions and updates to terms—this resolution shall not be construed as permitting loan extensions on demand with cherry-picked terms. Rather, loan terms shall be negotiated as a suite of changes in the mutual best interest of the City and the project. For example, if the interest rate is reduced to reflect current standards, the monitoring fee must also be adopted. If a loan term is extended, the regulatory agreement must be extended concurrently. Prior to executing any updated agreements, staff shall perform due diligence to ensure that each project remains in good standing, or that the amendments would cure any breach under the agreements.

Policy Alternatives

Council could also choose to address the issue through the following alternative approaches:

- Continue to seek individual Council approval for each extension.

This is not recommended because it would unduly strain the capacity of both department staff and City Council. It would also create unnecessary uncertainty for owners of affordable housing as they make long-range plans for their projects.

- Require loans to be repaid in full when they reach their maturity date.

This is not recommended because City loan balances remaining on projects exceed what is repayable at the maturity date due to the residual receipts nature of the financing. A repayment requirement would trigger a wave of loan defaults and organizational crises among the nonprofit developer community. The vast majority of affordable properties do not have the resources to repay their City loans in full by the end of their term. City loans are soft loans, with a broad expectation that they will not be held to the same strict repayment terms as privately issued loans.

- Allow loans and regulatory agreements to be extended, but only with their original provisions, rather than the City's current standards.

This is not recommended because the City's standards have evolved over time to reflect current best practices that are consistent with industry standards. A refusal to update standard terms might impair the successful management of the City's portfolio.

## FISCAL IMPACT

No new expenditures of City funds will be made pursuant to this resolution.

If the resolution is adopted, loan balances will remain on the City's books and continue to accrue interest. Residual receipts payments will continue to be made to the extent that funds are available. For accounting purposes, the proposed resolution would mean that payments would be collected slowly over many years, rather than in full at the end of their initial term.

However, as discussed above, demanding immediate payment in full would likely trigger a wave of defaults and foreclosures of affordable housing developments. The City has a vested interest in ensuring the long-term success of these projects. The City could end up spending an equal or greater amount of money stabilizing projects after a wave of loan defaults than would be received from the deferred loan repayments.

Technically, reducing interest rates will result in less interesting accruals by the City. However, this is balanced by the changes in residual receipts payments that actually incentivize projects to generate some cash flow where possible.

If loan extensions are granted to all projects with a term expiring on or before December 31, 2028, and monitoring fees are added to each loan, the City would receive approximately $11,536 annually in monitoring fees. These fees must be used for asset monitoring purposes, such as staff salaries and the cost of database management.

## PUBLIC OUTREACH / INTEREST

Each City loan was approved by Council at the time of issuance, with the public duly notified and given an opportunity to provide comments. If projects seek additional City funds in the future, they will be required to engage in a community outreach process, and any new funding resolution must be brought before Council for approval.

Affordable housing preservation is in keeping with the stated priorities of Oakland residents, elected officials, and the Housing and Community Development Department (HCD). The 2022-23 City of Oakland Budget Priorities Survey identifies homelessness and housing costs as the top concerns of Oakland residents. Preservation is one plank of the “Three P” framework (along with Protection and Production) promoted by HCD’s 2021-2023 Strategic Action Plan, as presented to City Council on April 26, 2021, and re-affirmed by HCD in its 2023-2027 Strategic Action Plan. Oakland voters have consistently expressed their support for affordable housing production and preservation, including by passing the Measure KK Affordable Housing and Infrastructure Bond in 2016 and the Measure U Affordable Housing Infrastructure Bond in 2022.

## COORDINATION

This resolution and agenda report was prepared with the assistance of the Office of the City Attorney and the Budget Bureau.

## SUSTAINABLE OPPORTUNITIES

***Economic***: The proposed resolution will help preserve the long-term fiscal viability of Oakland’s affordable housing portfolio. By extending the terms of loans and regulatory agreements, this resolution will prevent economic turmoil for affordable housing owners, residents, and the City.

***Environmental****:* The vast majority of Oakland’s affordable housing portfolio consists of dense multifamily apartment buildings close to transit and amenities. By ensuring the long-term fiscal viability of these developments, the City is reducing the amount of embodied carbon that might otherwise be caused by demolition and reconstruction.

***Race & Equity***: A formal race and equity impact analysis was not performed in conjunction with this report. The race and equity indicators governing this requested action are as follows: affordable housing directly improves outcomes of racially and socially marginalized groups by providing permanent housing to lower-income households. The proposed resolution would help preserve deed-restricted affordable housing over the long term, thereby preventing displacement among existing affordable housing residents.

## ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator To Extend The Terms Of Expiring Affordable Housing Loans And Regulatory Agreements By Up To Fifty-Five Years, And To Amend Loan Documents To Reflect Current City Policies And Standards.

For questions regarding this report, please contact Christia Katz Mulvey, Manager, Housing Development Services, at 510-238-3623.

Respectfully submitted,

Emily Weinstein
Emily Weinstein (Mar 11, 2024 11:33 PDT)

EMILY WEINSTEIN
Director, Housing and Community Development Department

Reviewed by: Christia Katz Mulvey
Manager, Housing Development Services

Prepared by: Joseph Tran
Housing Development Coordinator III
Janet Howley
Project Manager
Housing Development Services

## Attachment A
## Expiring Affordable Housing Loans and Regulatory Agreements, 2023-2028

| Project Name/Owner | Address | Expiration Date | Number of units | District |
|---|---|---|---|---|
| Acorn I/BOHM, Inc. | 1143 10th Street | 2029 | 87 | 3 |
| Adcock Joyner;/532 16th St. Inc. | 532 16th Street | 2023 | 50 | 3 |
| Allen Temple Arms I/ Allen Temple Development Corporation I | 8135 International Blvd. | 2024 | 76 | 7 |
| Allen Temple Arms II/ Allen Temple Development Corporation II | 1388 81st Avenue | 2024 | 50 | 7 |
| Aztec Hotel/ House of Dignity | 583-587 8th Street | 2027 | 61 | 3 |
| Effie's House/ East Bay Asian Local Development Corporation (EBALDC) | 829 E. 19th Street | 2028 | 20 | 2 |
| Hugh Taylor House (Seminary)/ East Bay Asian Local Development Corporation (EBALDC) | 1935 Seminary Avenue | 2028 | 42 | 6 |
| J.L Richards (Evergreen Terrace)/ | 250 E. 12th Street | 2028 | 80 | 2 |

| | | | | |
|---|---|---|---|---|
| Christian Church Homes | | | | |
| Peter Babcock/ (SAHA) | 2350 Woolsey Street | 2025 | 5 | 1 |
| Rosa Parks/BOSS | 521 W. Grand Avenue | 2026 | 13 | 3 |