



*CITY COUNCIL AND  
HOUSING AUTHORITY  
AGENDA REPORT*

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**MEETING DATE: SEPTEMBER 17, 2013**

**ITEM NUMBER \_\_\_\_\_**

**SUBJECT: AUTHORIZE APPROPRIATION FROM THE CITY'S GENERAL FUND, RESERVE ACCOUNT, FOR THE CURE AND PAYOFF OF CIVIC CENTER BARRIO HOUSING CORPORATION DEFAULTS AND ACQUISITION OF EIGHT-UNIT AFFORDABLE HOUSING PROJECT AT 717, 721 JAMES STREET, COSTA MESA; CMHA TO AUTHORIZE ACCEPTING CONVEYANCE OF THE SUBJECT PROPERTIES WITH CMHA TO BE NOMINATED FOR VESTING**

**DATE: SEPTEMBER 5, 2013**

**FROM: CHIEF EXECUTIVE OFFICER/EXECUTIVE DIRECTOR**

**PRESENTATION BY: THOMAS R. HATCH, CEO/EXECUTIVE DIRECTOR  
CELESTE STAHL BRADY, SPECIAL COUNSEL**

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**RECOMMENDED ACTION OF CITY COUNCIL AND CMHA**

Adopt Joint City Council/CMHA Resolution No. 13- \_\_\_\_ for the City's Appropriation of \$350,000 from the General Fund, Reserve Account, and Authorizing Actions and Acceptance of Conveyance by CMHA Relating to the 8-Unit Affordable Housing Project at 717, 721 James Street Owned by Civic Center Barrio Housing Corporation

**BACKGROUND**

On August 27, 2002, the City of Costa Mesa (City) entered into an Affordable Housing Agreement with Civic Center Barrio Housing Corporation (CCBHC) concerning an 8-unit affordable housing project in two 4-plexes located at 717 and 721 James Street, Costa Mesa ("Properties").

In implementation of the Very Low Income affordable housing project ("Project"), the City provided to CCBHC a subordinate residual receipts loan in an original principal amount of \$1,041,940. The Project and Properties are subject to recorded covenants establishing the conditions of affordable housing, property management, maintenance,

and other use and operation of the Project in a Declaration recorded against the Properties in effect until 2057. Also in 2002, CCBHC secured a first lien mortgage with the Low Income Housing Fund (LIHF) in an original principal amount of \$395,000 that has a current balance of about \$306,000. LIHF assigned the loan to Self-Help Credit but is agent for the lender (“LIIF/Self-Help”). The City, CCBHC and LIIF/Self-Help are parties to a Subordination and Recognition Agreement that sets forth the terms and conditions of the City’s subordination and by which LIIF/Self-Help provides the City specific rights and remedies in the event of CCBHC’s default on the first mortgage.

The LIIF/Self-Help loan became due on June 1, 2013, but CCBHC failed to refinance and that loan was declared in default by LIIF/Self-Help on July 11, 2013. A Notice of Default was recorded against the Properties on August 21, 2013 and foreclosure proceedings have commenced. It should also be noted that there are three other CCBHC projects that are the subject of affordable housing agreements and for which CCBHC received subordinate residual receipts loans under similar terms to this Project. One loan is a housing asset of the CMHA, as housing successor, and the other two projects are City loans. The other CCBHC projects comprise a total of 22 more affordable housing units and are located at 734, 740 and 744 James Street (11 units), 707 and 711 W. 18th Street Project (8 units), and 745 W. 18th Street (3 units). The Notice of Defaults is directed to all four CCBHC projects (30 units total) and the City will continue to avail all rights and remedies set forth in those affordable housing loan documents and related instruments.

On May 10, 2011, the City and CCBHC entered into First Amendments to all four Affordable Housing and HOME Investment Partnership Agreements the purpose of each was to simplify the terms of the residual receipt notes for the four projects.

## ANALYSIS

Section 13 of the Subordination and Recognition Agreement expressly authorizes the City to cure the first lien; then, upon the City’s payment, CCBHC is required to convey the Properties to the City for no additional consideration. If the City does not avail these remedies and the foreclosure proceedings were to proceed, the City’s second lien and the recorded Declaration would be cancelled. Because the original Project was financed by the City with federal HOME Program funds that require covenanted affordable housing until 2057, in the event the Declaration or subordinate lien were to be foreclosed, HUD will require the City to repay in full all HOME Program monies invested in the Project.

In order to preserve these “at-risk” affordable housing units, staff and legal counsels recommend that the City cure and payoff the LIIF/Self-Help loan thereby requiring CCBHC to deed the Properties to the City for no other consideration. The City would nominate the Costa Mesa Housing Authority (“CMHA”) to take title to the Properties as the CMHA is expressly authorized under the California Housing Authority Law, Health and Safety Code Section 34200, *et seq.* to own and operate affordable housing.

The payoff demand from LIIF/Self-Help as of August 1, 2013 was about \$311,000 that included its fees/costs; but in September to October 2013 the demand will be higher

due to initiation of foreclosure by LIIF/Self-Help; however, the estimated total payoff including LIIF/Self Help's fees/costs should be less than \$350,000.

Pursuant to the 717/721 James Street Agreement, the City issued the Notice of Defaults on July 16, 2013 because the above-described default also triggered defaults under the City's loan documents. The City's Notice of Defaults alleged: (i) cross-default, (ii) failure to submit Annual Financial Statement, (iii) failure to make residual receipts payment or file the First Amendment Certificate, (iv) failure of representations and warranties, and (v) other non-performance. CCBHC has not cured the defaults asserted by LIIF/Self-Help or by the City.

As stated above, there are three other CCBHC projects that are the subject of affordable housing agreements under a similar structure to 717/721 James Street. The Notice of Defaults is directed to all four CCBHC properties, although the Council actions this evening are only directed to the James Street properties.

Staff and legal counsel have been in discussions with senior HUD representatives about the pending defaults because this is a HOME-funded Project. Specifically, the City asked HUD for authorization to spend HOME Program funds for the cure and payoff; however, HUD will require a new application for funding with new underwriting of the Properties and evaluation of CCBHC (and the other projects), which HUD informed could take between 60 days and up to a year or more after a complete application package is presented to HUD, with no assurance of HUD approval. HUD also reminded staff and counsel that if any of the projects' covenants or Costa Mesa's loans were to be foreclosed the City is required to repay in full all HOME Program monies invested in the projects.

Due to the timing of the pending foreclosure proceeding for the Properties, the HUD issues, and the objective to retain this affordable housing project in the community, staff and legal counsels recommend that the City appropriate \$350,000 from the General Fund, Reserve Account to pay off the LIIF/Self-Help loan and authorize the CEO/Executive Director and legal counsels to take all actions necessary to accept conveyance of the Properties from CCBHC and carry out the City's rights under the 717/721 James St. Agreement and related loan documents. Concurrent with acquisition, the City or CMHA would retain professional property management with experience in affordable housing to manage and maintain the Properties. After acquisition a request for qualifications will be issued to select a new, qualified non-profit to own and operate the affordable housing.

Keyser Marston Associates, the City's economic/housing consultant, has also reviewed this matter and advises that a new non-profit owner will be able to pay the City for the Properties with proceeds from a new first mortgage and the City would reinstate a subordinate lien securing the HOME Program funds to maintain the City's investment in the Project. In effect, the City General Fund payoff could be considered a type of "bridge loan" for the Properties. The real property negotiations and price and terms of that future transaction will be presented to the City Council at a later date.

## **FISCAL IMPACT**

The City will expend about \$350,000 from the General Fund, Reserve Account to carry out this action. However, it is anticipated that these funds will be paid back once the Project is sold to a non-profit developer.

## **LEGAL IMPACT**

The City Attorney and Special Counsel Celeste Brady have reviewed this matter and recommend the City Council to take the recommended action.

## **CONCLUSION**

Tonight's action is for the appropriation from the General Fund, Reserve Account of \$350,000 and to authorize the CEO and legal counsels to take all actions necessary to accept conveyance of the Properties from CCBHC and carry out the City's rights under the 717/721 James St. Agreement and related loan documents. Upon conveyance, City staff will arrange for a property management firm to manage and maintain the property, until such time as is sold to a non-profit developer.

Staff and legal counsels recommend that the City Council adopt the attached Joint Resolution making the budget adjustment and appropriating \$350,000 from the General Fund, Reserve Account and authorize the CEO/Executive Director and legal counsels to take all actions necessary to accept conveyance of the Properties from CCBHC and carry out the City's rights under the 717/721 James St. Agreement and related loan documents. The CMHA will be nominated for vesting and ownership of the Properties, so is included in the Joint Resolution (Attachment A).

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THOMAS R. HATCH  
Chief Executive Officer/Executive Director CMHA

Attachment A: [Joint City Council and CMHA Resolution](#)