

**CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)**

DEPARTMENT: Community and Human Development
AGENDA DATE: April 25, 2006
CONTACT PERSON/PHONE: Roberto Soto/(915) 541-4346
DISTRICT(S) AFFECTED: All Districts

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

City Council is asked to approve a Resolution that will adopt a new Community Development Loan Authorization policy regarding the administration and collection of the Department's accounts in our two revolving loan funds. This policy authorizes the City Attorney's Office and the Department of Community and Human Development to take the appropriate action in connection with delinquent accounts relative to Loan Restructuring in Lieu of Foreclosure; Loan Foreclosure Lawsuits; and Declaring Loans Uncollectible. The City Manager will be authorized to sign any and all necessary documents determined appropriate by the City Attorney's Office and recommended by the Director of Community and Human Development. By adopting this Resolution, City Council will also be rescinding the previous policy adopted on September 23, 2003.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

A complete description of policy entitled Community Development Loan Authorization is attached as Exhibit "A"

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

This Resolution supersedes a similar policy approved by City Council Resolution dated September 23, 2003.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

There will be no cost incurred by the City arising from restructuring agreements. Such costs will be borne by the borrower that created the delinquency. The cost for outside counsel to commence non-judicial foreclosure proceedings will be charged to the respective revolving loan fund.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, Council passed resolution dated September 23, 2003 wherein it set forth standards regarding loan restructuring, loan foreclosure, and declaring certain loans uncollectible; and

WHEREAS, Council therein authorized a single restructuring agreement of up to five years for any delinquent account when the borrower paid a certain percentage of the delinquency as down payment; and

WHEREAS, The City's servicing contract with AmeriNational requires payment of certain fees associated with the preparation of such loan restructuring agreements; and

WHEREAS, the City incurs costs when non-judicial foreclosure proceedings are commenced by outside counsel as a result of borrower inaction following City requests for payment of delinquency; and

WHEREAS, Council has determined that the City should not be required to bear such costs associated with restructuring agreements and that such costs are more properly borne by the borrower that created the delinquency.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. That the City Council of the City of El Paso hereby adopts Exhibit "A", entitled Community Development Loan Authorization, providing authorization to the City Attorney's Office and the Department of Community and Human Development, in connection with (1) Loan Restructuring in Lieu of Foreclosure, (2) Loan Foreclosure/Lawsuits and (3) Declaring Loans Uncollectible; and that the City Manager and Director of Community and Human Development be authorized to take any and all consistent action necessary to remedy such delinquencies.

2. That this resolution supersede Council resolution dated September 23, 2003.

APPROVED this _____ day of _____ **2006**

John F. Cook,
Mayor

RS

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



Nathalie Prise, Director
Community and Human Development

EXHIBIT "A"

COMMUNITY DEVELOPMENT LOAN AUTHORIZATION

GENERAL:

It is necessary for the City Council of the City of El Paso to set policy and provide authorization with respect to Department of Community and Human Development ("Department") provided rehabilitation, new construction, reconstruction, and first time homebuyer loans, hereinafter collectively referred to as "Loan(s)", in order to promote efficiency, consistency, and expediency in the administration and collection of the Loans.

RESTRUCTURING OF LOAN IN LIEU OF FORECLOSURE AUTHORIZATION:

Restructuring of the Loan(s) in Lieu of Foreclosure shall be authorized under the following circumstances:

- (1) In the case of an owner-occupied Loan: if the Borrower(s) makes an initial good faith Loan payment in the amount of 10% of the total delinquency of the Loan and otherwise complies with (3) through (5) below, the Loan shall be restructured to increase the monthly payment due from Borrower(s) to bring the Loan account current within five (5) years/60 months, with regular Loan payments (in the original Loan payment amount) to resume by Borrower(s) until Loan Maturity. Loans maturing in less than five (5) years shall contain a shorter restructuring period to ensure that the loan is paid in full by the original loan maturity date.
- (2) In the case of an investor-owner Loan: if the Borrower(s) makes an initial good faith Loan payment in the amount of 20% of the total delinquency of the Loan and otherwise complies with (3) through (5) below, the Loan shall be restructured to increase the monthly payment due from Borrower(s) to bring the Loan account current within three (3) years/36 months, with regular Loan payments (in the original Loan payment amount) to resume by Borrower(s) until Loan Maturity. Loans maturing in less than three (3) years shall contain a shorter restructuring period to ensure that the loan is paid in full by the original loan maturity date.
- (3) With regard to (1) and (2) noted above, only one restructuring agreement shall be permitted during the life of the loan except when additional restructuring agreements are authorized by a loan servicing company under contract with the City. Further, borrower shall bear all costs associated with creating and entering into a restructuring agreement provided by any entity the City of El Paso contracts with for loan servicing as well as any costs associated with collections activities up to and including preparation for non-judicial foreclosure instituted by outside counsel prior to authorization of any loan restructuring agreement. Such document creation or reimbursement of collection costs shall be in addition to delinquency down payments

of 10% for owner occupied loans and 20% for investor-owner loans provided for above.

- (4) Restructuring agreements discussed in (1), (2), or (3) above shall not be permitted once the property securing the delinquent loan has been posted for non-judicial foreclosure in accordance with §51.002.B of the Texas Property Code.
- (5) In the event that the Borrower(s) does not comply in accordance with (1) through (4) noted above, as applicable, the Department shall direct the City Attorney's Office to proceed as outlined under the Foreclosure/Lawsuit Authorization immediately below.

FORECLOSURE/LAWSUIT AUTHORIZATION:

Foreclosure and/or a Lawsuit relating to the Loan and the City's lien securing the Loan shall be authorized under the following circumstances:

After the Borrower(s) has been notified in writing that the Loan is in default and given an opportunity to cure and the Borrower(s) does not:

- (1) pay the entire Loan delinquency within thirty days of the City's forwarding of the notice of default and continue making the regularly required monthly Loan payment as required by the Loan documents; or
- (2) agree to and comply with the Restructuring of the Loan as outlined and authorized herein.

UNCOLLECTIBLE LOAN AUTHORIZATION:

Declaring the Loan uncollectible shall be authorized under the following circumstances:

Following due diligence conducted by the Department concerning the Loan and the City's lien securing the same, it is determined by the Department that:

- (1) The City's lien has been extinguished by a foreclosure of a lien in a superior lien position and there is a new owner of record on the property, or the original Borrower(s) on the Loan cannot be located; or
- (2) An Order of Discharge has been entered by a United States Court of Bankruptcy discharging the Borrower(s) from the obligation of the Loan and/or the Court of Bankruptcy has ordered a Trustee's Sale of the Property and there are no excess or insufficient proceeds from the sale to satisfy the Loan; or

- (3) Given the individual factual circumstances concerning the Loan and the City's Lien securing the Loan, the estimated costs of collection on the Loan exceed the anticipated amount to be recovered on the Loan.