

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

CITY CLERK DEPT.
06 NOV 27 PM 2:50

DEPARTMENT: Community and Human Development

AGENDA DATE: December 5, 2006

CONTACT PERSON/PHONE: William Lilly – 541-4500

DISTRICT (S) AFFECTED: All Districts

SUBJECT:

City Council is asked to approve a resolution that will amend the City's current Community Development policy regarding the administration and collection of the Department's delinquent loan accounts. This amendment is intended to provide the following: 1) allow loan delinquency repayment agreements of three years for investor loans and five years for owner occupied loans even if such period runs past the original loan maturity date; 2) require that property taxes be paid or are being paid pursuant to a payment plan before any formal loan delinquency repayment agreement is authorized; 3) allow the Department to bid up to the lesser of the Central Appraisal District value or current principal plus interest at any foreclosure auction when deemed prudent; 4) clarify that loan assumptions are permitted upon payment of a \$100.00 fee by someone otherwise qualified under the Department's current loan program; 5) allow for residential property management of any foreclosed property when required; and 6) provide reimbursement for the relocation expense for any tenants of the property foreclosed by the City.

BACKGROUND / DISCUSSION:

A complete description of the proposed policy as revised is attached

PRIOR COUNCIL ACTION:

City Council revised the delinquent loan accounts policy on April 25, 2006. In consideration of experience gained with recent non-judicial foreclosures, staff recommends the changes requested.

AMOUNT AND SOURCE OF FUNDING:

There will be no cost incurred to the City for delinquent loan repayment agreements. The tenant relocation reimbursement will be paid from 01101-71010276-71000 and the cost of outside counsel for non-judicial foreclosure proceedings will be charged to the respective revolving loan fund.

BOARD / COMMISSION ACTION:

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

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

DEPARTMENT HEAD: _____

cc: Deborah G. Hamlyn, Deputy City Manager, Quality of Life

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

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WHEREAS, Council approved, by resolution dated April 25, 2006, standards regarding loan restructuring, loan foreclosure, and declaring certain loans uncollectible; and

WHEREAS, the Community and Human Development Department recommends revisions to such resolution, such revisions believed to be necessary for more efficient and flexible delinquent account loan handling; and

WHEREAS, Council finds that the revisions recommended by the Department of Community and Human Development are appropriate and necessary and should be adopted as official City policy;

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 Director of Community and Human Development be authorized to take any and all action consistent with this resolution necessary to remedy such delinquencies.
2. That this resolution supersedes Council resolution dated April 25, 2006.

APPROVED this 5th day of December 2006

John F. Cook,
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



Bill Lilly, Interim Director
Community and Human Development

EXHIBIT "A"

COMMUNITY DEVELOPMENT LOAN AUTHORIZATION**GENERAL:**

City Council herein sets policy and provides certain 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) 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 as same may be renewed and/or extended by such restructuring agreement.
- (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) 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 as same may be renewed and/or extended by such restructuring agreement.
- (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 and verification that taxes are paid in full or are being paid pursuant to an authorized payment plan.

- (4) In the event that the Borrower(s) does not comply in accordance with (1) through (3) noted above, as applicable, the Department is directed to proceed as outlined under the Foreclosure/Lawsuit Authorization immediately below.

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FORECLOSURE/LAWSUIT AUTHORIZATION AND LIMITATIONS:

- (1) 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:

- (a) 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
 - (b) agree to and comply with the Restructuring of the Loan as outlined and authorized herein.
- (2) The Department is authorized but not required, at any foreclosure auction, to bid up to "100% " of the lesser of the El Paso Central Appraisal District valuation or delinquent loan and grant amount owing to include any accrued interest as well as collection fees and costs.
- (3) The Department is authorized to permit an assumption of a delinquent loan to an individual otherwise qualified under federal regulations after initiation of foreclosure proceedings when such assumption otherwise complies with requirements for restructuring of loans, property taxes are current or are being paid pursuant to payment plan authorized by the El Paso Consolidated Tax Office, and a payment in the amount of \$100.00 is provided.
- (4) The Department shall recommend to Council initiation of suits on deficiency when it determines such suit to be in the City's best financial interest. City Council shall decide such matters on a case by case basis
- (5) The Department is authorized to manage properties acquired, such management to include but not limited to creating and terminating tenancies as well as repair and maintenance deemed appropriate and reasonable by the Department Director or designee. Property management authority additionally includes authorization to acquire any and all insurance deemed necessary and appropriate. The City Manager or designee is directed to create a written management policy in this regard.
- (6) The Department is permitted to provide up to \$1,000.00 in moving related expenses per dwelling unit for any low income tenant displaced due to foreclosure of the City's lien interest.

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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.

Any lien created by a loan declared uncollectible shall not be released unless payment of all amounts due has been made.