

TO: James App, City Manager  
FROM: Ed Gallagher, Community Development Director  
SUBJECT: Oak Park Redevelopment: Request for Deferral of Development Impact Fees  
DATE: December 4, 2012

---

Needs: For the City Council to consider a request from the Housing Authority of the County of Monterey (HACM) to revise the term of a loan to secure payment of deferred payment of Sewer and Water Connection Fees, Development Impact (AB 1600) Fees, and Building Permit Fees for Phase One of the Redevelopment of Oak Park.

- Facts:
1. At its meeting of March 12, 2012, the City Council adopted Resolution 12-031 to approve a deferral of up to \$1.018 million in City fees for Phase One, subject to a loan agreement that provided for repayment of the deferred fees over a 17 year term. (Please see Attachment #1.)
  2. Phase One of the Redevelopment of Oak Park consists of 80 new units, 40 of which will replace existing units and 40 will be new units. The fees will only be charged on the 40 new units.
  3. On November 20, HACM filed a letter requesting that the term of the loan for the fee deferral be extended to 33 years to accommodate underwriting requirements for USDA Financing (Please see Attachment #2.)
  4. The fee deferral loan will be one of three loans that is expected to be repaid using residual receipts from the Project, to the extent residual receipts are available, which also includes seller take-back financing for the property and a HOME loan being provided through the County under the federal HOME Investment Partnerships Program.
  5. HACM was awarded Federal Low Income Housing Tax Credits in September and must obtain a building permit and close their financing in December in order to retain the tax credits.
  6. The City Attorney has indicated that there are no legal issues associated with HACM's request for the extension of the term.

Analysis and

Conclusion: It is common for low income housing developments to have multiple layers of financing. It is not uncommon for primary lenders to have underwriting requirements that affect secondary lenders, such as the City. The proposed loan agreement does provide that the balance of the loan and any accrued interest may be repaid without penalty at any time. HACM has indicated it expects to refinance at least a portion of the debt service for the Project at approximately year 17 of the loan, in which case the parties will then meet and confer to determine if it is feasible to pay off or restructure the fee deferral loan to provide for repayment sooner than the 33 year repayment period.

Reference: California Health and Safety Code Section 34516, 2011 Housing Element; 2006 Economic Strategy

Fiscal Impact: Building Permit and Water and Sewer Connection Fees are paid at the time of issuance of a building permit; Development Impact Fees are paid at the time of occupancy. The loan, with its interest payments, is set up to make the General Plan whole over a 33 year period. However, the loan may be repaid on an earlier schedule without penalty.

- Options:
- a. That the City Council adopt attached Resolution 12-XXX to approve a deferral of City Sewer and Water Connection Fees, Development Impact (AB 1600) Fees, and Building Permit Fees for Phase One of the Redevelopment of Oak Park; said deferral to be evidenced by a loan agreement with a note, and secured by a deed of trust to be recorded against the Project, with repayment of the deferred fees over 33 years with a compounded annual average interest rate of 3.75%, from a portion of the residual receipts from the Project, with the condition that upon a refinancing of outstanding debt from the Project, the parties will meet and confer to determine the feasibility of payoff or restructuring of the fee deferral loan to provide for repayment sooner than the 33 year repayment period; the loan agreement shall be prepared by the City Attorney and executed by the Housing Authorities for the City of Paso Robles and County of Monterey.
  - b. Amend, modify, or reject the above options.

ATTACHMENTS:

1. Resolution 12-031
2. Letter from HACM dated November 20, 2012
3. Resolution Approving a Deferral of City Fees

## RESOLUTION NO. 12-031

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES  
 APPROVING A DEFERRAL OF WATER CONNECTION, SEWER CONNECTION,  
 DEVELOPMENT IMPACT, AND BUILDING PERMIT FEES TO ASSIST THE  
 REDEVELOPMENT OF OAK PARK PUBLIC (LOW INCOME) HOUSING

---

WHEREAS, at its meeting of June 1, 2010, the City Council of the City of El Paso de Robles (the "City Council") approved Planned Development (PD) 10-001 authorizing the redevelopment of Oak Park Public Housing to include the demolition of the existing 148 residential units and construction of 302 new low income units with a public park, community center, and offices (the "Project"); and

WHEREAS, the Housing Authority of the City of Paso Robles and the Housing Authority of the County of Monterey, who are co-applicants (the "Applicants") for the Project, have indicated an intent to seek Federal Low Income Housing Tax Credit financing for the Project, which will require that occupancy of all 302 units be restricted to households earning 60 percent or less of the Area (County) Median Income; and

WHEREAS, the Applicants propose that "Phase One" of the Project provide for 80 dwelling units, of which 41 will be replacement units (for existing units) and 39 will be new units; and

WHEREAS, the Applicants had previously requested assistance from the Redevelopment Agency of the City of Paso Robles ("Redevelopment Agency") for this project from the Redevelopment Agency's Low and Moderate-Income Housing Fund; and

WHEREAS, pursuant to AB 1X 26, all redevelopment agencies were dissolved as of February 1, 2012, and the monies in the Low and Moderate-Income Housing Fund may not be available; and

WHEREAS, the Applicants have submitted a letter, dated February 21, 2012, requesting that the City of Paso Robles (the "City") defer Water Connection, Sewer Connection, Development Impact, and Building Permit Fees (hereafter collectively referred to as "City Fees") for the 40 new units in Phase One; and

WHEREAS, the deferral of City Fees would be evidenced by a loan agreement, with a note in the principal amount of \$1,018,000 to be paid over 17 years at an average annual compounded rate of 3.75% from residual receipts from the Project, and secured by a deed of trust to be recorded against the Project; and

WHEREAS the City has previously deferred payment of City Fees for Hidden Creek Village, an affordable housing project; and

WHEREAS, the Project would help the City meet its low-income housing needs, as set forth in the 2011 Housing Element of the General Plan and the City's objective of housing its workforce as stated in the 2006 Economic Strategy; and

WHEREAS, it has been the City's practice to require that any multi-family rental housing units for lower income households, as defined by Health and Safety Code Section 50079.5, that obtain financial assistance enter in to an affordability covenant ("Affordability Covenant"), to be recorded against the units, to ensure that the units remain available at affordable housing costs to lower income households for the longest feasible time, but not less than thirty (30) years; and

WHEREAS, the Applicants intend to apply for an allocation of Federal Low Income Housing Tax Credit Financing, and the City's approval of the requested deferral of City Fees will enable the Applicants to submit a more competitive application;

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. Approval of Deferral of City Fees.

1. The City Council agrees to the deferral of City Fees for Phase One of the Project, to be paid over a period of up to 17 years from the date of issuance of a Building Permit for construction of dwelling units in Phase One of the Project subject to the terms and conditions described below, allowing dwelling units in Phase One of the Project to be occupied prior to full payment of said fees.
2. The deferral shall be provided in the form of a loan, which shall be structured as follows:
  - a. The principal amount shall be set at the amount of City Sewer Connection Fees, Water Connection Fees, Development Impact Fees, and Building Permit Fees in effect at the time of issuance of a Building Permit for Phase One of the Project, acknowledging that certain fees are not due to be paid until the time of issuance of a Certificate of Occupancy. That amount is estimated to be, and shall not exceed, \$1.018 million.
  - b. The loan shall accrue interest at the rate of 3.75 percent compounded annually.
  - c. The term of the loan shall be 17 years, which shall commence on the date of issuance of a building permit for construction of dwelling units in Phase One of the Project. Payments shall be made annually from residual receipts from the Project, to the extent residual receipts are available to make such payments; payments shall be credited first to interest, then to principal; the entire remaining unpaid balance of principal and accrued interest shall be due at the end of the 17-year term. The applicant may pre-pay the loan at any time without penalty, subject only to the amount of interest that has accrued to the date of payment.
3. Prior to issuance of a Building Permit for construction of dwelling units in Phase One of the Project, the Applicants shall enter into a Loan Agreement with the City, to be prepared by the City Attorney, which shall set forth the terms and conditions for the loan. The Loan Agreement shall include a promissory note to be executed by the Applicants, and a deed of trust and Affordability Covenant to be recorded against the Project.
4. The Loan Agreement shall provide, and the Affordability Covenant shall ensure, that the units shall be rented to "Lower Income Households", as defined by Health and Safety Code Section 50079.5, whose incomes do not exceed sixty percent (60%) of Area Median Income, at an affordable rent, for a period of at least thirty (30) years.
5. As a condition to the loan:
  - a. Applicants shall submit to City evidence that full financing for construction of Phase One of the Project has been approved by the appropriate authorities for each source of financing.
  - b. Applicants shall execute and deliver the note, deed of trust and Affordability Covenant; and the deed of trust and Affordability Covenant shall be recorded against the Project.
6. Should state legislation be enacted that would allow the former Redevelopment Agency's Low and Moderate Income Housing (LMIH) Funds to be used to assist this project, said LMIH Funds will be used first, and the loan described in subsection 2 reduced to cover any shortfall between the available LMIH funds and the requested \$1.018 million. Additionally, should LMIH Funds be used in any amount, the period of the Affordability Covenant described in subsection 4 shall be extended to 55 years.

SECTION 2.

The deferral of City Fees authorized by this resolution shall expire one year from the date set forth below, unless the Loan Agreement has been executed and construction of Phase One of the Project commenced.

PASSED AND ADOPTED by the City Council of the City of Paso Robles on this 6th day of March, 2012 by the following vote:

AYES: Hamon, Steinbeck, Gilman, Strong, Picanco

NOES:

ABSENT:

ABSTAIN:

  
\_\_\_\_\_  
Duane Picanco, Mayor

ATTEST:

  
\_\_\_\_\_  
Caryn Jackson, Deputy City Clerk



Monterey County Housing Authority  
Development Corporation - HDC

11/20/2012

Ed Gallagher  
Community Development Director  
1000 Spring Street  
Paso Robles, CA 93446

Mr. Gallagher,

On March 9, 2012 we received a Commitment of Financing in the amount of \$1,018,000 for our Oak Park Phase 1 TCAC application as a result of a previous City Council action. It outlines terms of 17 years, 3.75% interest and a Payment Schedule from residual receipts.

As we enter final underwriting for the loan and equity agreements, we find it would be more advantageous for the project to change the term to 33 years for the permanent period. While this extension of term will not impact the original payment schedule on the note, it will allow tax counsel to make an easier case for his opinion letter on "true debt" for the transaction. The 33 year term is tied to a USDA underwriting requirement for their permanent debt.

In order to get investors comfortable with the transaction, investors require an opinion from tax counsel saying that the debt is "true debt". Tax counsel typically doesn't review the projections until the structuring is complete - often just a few days before the deal closes, and so it would be too late to seek relief from the City if tax counsel demanded a change in terms. Please note: these changes are for IRS purposes, and does not impact how the deal will actually operate.

Along the same line, both tax counsel and the investor will want to see that the term of the soft debt is longer than the term of the first mortgage. Depending on how our conversations with USDA progress, this longest term of first mortgage debt may be as long as 33 years. If the public loans have a term of at least 33 years, this will reduce complications for the tax counsel to write his opinion, and also make the project look more attractive for the investor in their own credit review.

Allow me to restate previous deal points for the City Debt.

1. At the time of refinance or resyndication in approximately 15-18 years, the City will have significant leverage in that the development will require City approval to restructure the project. The City could require full paydown of their loan from refinance proceeds or alter the interest rate at that time.
2. This change in term will not impact the original projected payment schedule. Regardless is the term is 18 or 33 years, the City will get paid as the first priority from residual receipts.

We appreciate your consideration on this matter. If at all possible, it would be helpful to have this on the same City Council Agenda as the approval of the vesting map, currently scheduled for December 4<sup>th</sup> agenda. Thank you.

Sincerely,

Starla Warren  
Pres/CEO

## RESOLUTION NO. 12-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES MODIFYING ITS PRIOR APPROVAL UNDER RESOLUTION NO. 12-031 FOR DEFERRAL OF WATER CONNECTION, SEWER CONNECTION, DEVELOPMENT IMPACT, AND BUILDING PERMIT FEES TO ASSIST THE REDEVELOPMENT OF OAK PARK PUBLIC (LOW INCOME) HOUSING

---

WHEREAS, at its meeting of June 1, 2010, the City Council of the City of El Paso de Robles (the "City Council") approved Planned Development (PD) 10-001 authorizing the redevelopment of Oak Park Public Housing to include the demolition of the existing 148 residential units and construction of 302 new low income units with a public park, community center, and offices (the "Project"); and

WHEREAS, the Housing Authority of the City of Paso Robles and the Housing Authority of the County of Monterey, who are co-applicants (the "Applicants") for the Project, obtained approvals for Federal Low Income Housing Tax Credit financing for the Project, which will require that occupancy of all 302 units be restricted to households earning 60 percent or less of the Area (County) Median Income; and

WHEREAS, the Applicants submitted a letter, dated February 21, 2012, requesting that the City of Paso Robles (the "City") defer Water Connection, Sewer Connection, Development Impact, and Building Permit Fees (hereafter collectively referred to as "City Fees") for "Phase One" of the Project, which includes 80 dwelling units, of which 40 will be replacement units (for existing units) and 40 will be new units; and

WHEREAS, on March 6, 2012, the City Council adopted Resolution No. 12-031 approving the deferral of City Fees, to be evidenced by a loan agreement, with a note in the principal amount of \$1,018,000 to be paid over 17 years at an average annual compounded rate of 3.75% from residual receipts from the Project, and secured by a deed of trust to be recorded against the Project; and

WHEREAS, Applicants are seeking approvals from additional sources for financing for the Project, including through the USDA housing program; and

WHEREAS, on November 20, HACM filed a letter requesting that the term of the loan for the fee deferral be extended to 33 years to accommodate underwriting requirements for the USDA Financing, with other terms and conditions for repayment of the City Fees loan to remain the same; and

WHEREAS, the Project would help the City meet its low-income housing needs, as set forth in the 2011 Housing Element of the General Plan and the City's objective of housing its workforce as stated in the 2006 Economic Strategy; and

WHEREAS, it has been the City's practice to require that any multi-family rental housing units for lower income households, as defined by Health and Safety Code Section 50079.5, that obtain financial assistance enter in to an affordability covenant ("Affordability Covenant"), to be recorded against the units, to ensure that the units remain available at affordable housing costs to lower income households for the longest feasible time, but not less than thirty (30) years; and

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1. Modification to Prior Approval for Deferral of City Fees.

1. The City Council reaffirms its prior approval for the deferral of City Fees for Phase One of the Project, as set forth in Resolution No. 12-031, and further approves an extension of the period for the repayment of the City Fees, to be paid over a period of up to 33 years from the date of issuance of a Building

Permit for construction of dwelling units in Phase One of the Project subject to the terms and conditions described below, allowing dwelling units in Phase One of the Project to be occupied prior to full payment of said fees.

2. The deferral shall be provided in the form of a loan, which shall be structured as follows:
  - a. The principal amount shall be set at the amount of City Sewer Connection Fees, Water Connection Fees, Development Impact Fees, and Building Permit Fees in effect at the time of issuance of a Building Permit for Phase One of the Project, acknowledging that certain fees are not due to be paid until the time of issuance of a Certificate of Occupancy. That amount is estimated to be, and shall not exceed, \$1.018 million.
  - b. The loan shall accrue interest at the rate of 3.75 percent compounded annually.
  - c. The term of the loan shall be 33 years, which shall commence on the date of issuance of a building permit for construction of dwelling units in Phase One of the Project; provided that if the outstanding debt from the Project is refinanced at any time, the parties will meet and confer to determine the feasibility of payoff or restructuring of the fee deferral loan to provide for repayment sooner than the 33 year repayment period.
  - d. Payments shall be made annually from residual receipts from Phase One of the Project, to the extent residual receipts are available to make such payments. The fee deferral loan will be one of three loans that is expected to be repaid using residual receipts from the Project, including seller take-back financing for the property and a HOME loan being provided through the County under the federal HOME Investment Partnerships Program. The City shall receive an annual amount equal to 77% of the residual receipts from Phase One of the Project.
  - e. Payments shall be credited first to interest, then to principal; the entire remaining unpaid balance of principal and accrued interest, if any, shall be due at the end of the 33-year term. The applicant may pre-pay the loan at any time without penalty, subject only to the amount of interest that has accrued to the date of payment.
3. Prior to issuance of a Building Permit for construction of dwelling units in Phase One of the Project, the Applicants shall enter into a Loan Agreement with the City, to be prepared by the City Attorney, which shall set forth the terms and conditions for the loan. The Loan Agreement shall include a promissory note to be executed by the Applicants, and a deed of trust and Affordability Covenant to be recorded against the Project.
4. The Loan Agreement shall provide, and the Affordability Covenant shall ensure, that the units shall be rented to "Lower Income Households", as defined by Health and Safety Code Section 50079.5, whose incomes do not exceed sixty percent (60%) of Area Median Income, at an affordable rent, for a period of at least thirty (30) years, and shall continue thereafter for so long as any amount remains due and owing to the City under the Loan Agreement and the promissory note.
5. As a condition to the loan:
  - a. Applicants shall submit to City evidence that full financing for construction of Phase One of the Project has been approved by the appropriate authorities for each source of financing.
  - b. Applicants shall execute and deliver the note, deed of trust and Affordability Covenant; and the deed of trust and Affordability Covenant shall be recorded against the Project.

SECTION 2.

The deferral of City Fees authorized by this resolution shall expire one year from the date set forth below, unless the Loan Agreement has been executed and construction of Phase One of the Project commenced.

PASSED AND ADOPTED by the City Council of the City of Paso Robles on this 4th day of December, 2012 by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

Duane Picanco, Mayor

ATTEST:

---

Caryn Jackson, Deputy City Clerk