

## Legislation Text

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File #: #18-368, Version: 1

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**PREPARED BY:** JENNIFER LUONG

**DATE OF MEETING:** 11/05/18

**SUBJECT:**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN PABLO AS HOUSING SUCCESSOR APPROVING AND AUTHORIZING THE DEFERRAL OF ANNUAL PAYMENTS DUE TO THE CITY FROM GIANT DEVELOPMENT, L.P., ATTRIBUTABLE TO LOANS MADE FOR THE GIANT ROAD APARTMENTS IN ORDER TO ALLOW REPAIRS CAUSED BY WATER INTRUSION

**CITY MANAGER RECOMMENDATION**

Adopt Resolution

**COMPLIANCE STATEMENTS**

*Fiscal Resiliency Policies:* Affordable higher quality & market rate rental housing projects are adopted policy items under the FY 2018-21 Council Priority Workplan, effective November 1, 2017.

**CEQA Compliance Statement**

This is a financing action and not a project requiring environmental review pursuant to the California Environmental Quality Act (CEQA).

**BACKGROUND**

On September 28, 2004, the Redevelopment Agency of the City of San Pablo (the "RDA") authorized an interest-free \$500,000 loan for the Giant Road Apartments, an 86-unit affordable rental dwelling project (the "Project"). An additional interest-free \$1,200,000 loan was authorized by the RDA on August 16, 2005, for a total Project loan of \$1,700,000. Funding for the Project also included loans from the State Department of Housing and Community Development ("HCD") and the County of Contra Costa (the "County"). The Borrower is Giant Development, L.P., a California limited partnership. The general partner of Giant Development, L.P., is a California limited liability company owned and controlled by East Bay Asian Local Development Corporation ("EBALDC").

On February 1, 2012, the RDA was dissolved. The City of San Pablo, as the housing successor of the RDA, is now the entity entitled to repayment of the Project loan.

By letter dated July 11, 2018, a copy of which is attached to this staff report, EBALDC described that significant damage caused by water intrusion occurred at the Project. As described in its letter, to complete the repairs, EBALDC will borrow from a transition reserve established in connection with the HCD funding. In order to use the reserve funds, HCD is requiring that EBALDC agree to replenish the reserve funds from surplus cash. This requires all lenders receiving annual payments of surplus cash agreeing to forgo those payments for several years until the reserve fund is replenished as required by HCD.

HCD agreed to forgo its annual payment of surplus cash provided the RDA and the County also

agreed. The County authorized deferment on July 24, 2018.

The annual payments of surplus cash to the RDA are described in and governed by an Amended and Restated Intercreditor Agreement dated July 1, 2009, and recorded on September 11, 2009, as Document No. 2009-0216915 in the Official Records of the County. A copy of the Amended and Restated Intercreditor Agreement is attached to this staff report. The surplus cash, referred to as "Residual Receipts" in the Intercreditor Agreement, is essentially the annual income remaining after the payment of annual operating expenses, including mortgage payments. The Residual Receipts are divided pro rata among HCD, the RDA/City and the County. To date, the RDA/City has been receiving approximately \$34,546.40 per year, and the balance owed on the Project loan is \$1,549,163.98.

EBALDC states it has filed a claim against the contractor pertaining to the water damage. If successful, funds received from that claim would presumably be available to augment surplus cash available for payment. That claim may however take several years.

### **FISCAL IMPACT**

The funds received in repayment of the Project loan are deposited in the City's Low and Moderate Income Housing Asset Fund.

Repayment of loans on affordable housing projects depend on operating costs to provide the subsidized housing and have long horizons. In this situation, the City's loan is not scheduled to be paid off until 2060; although, the City as Housing Successor has been receiving some annual residual payments from surplus operating funds. Authorizing the deferral of the annual payments of surplus cash for several years may result in a delay in repayment of the Project loan. However, without the ability to complete the repairs now or if the repairs must be completed over a period of time as funds become available, the Project income may be diminished which could result in lower or no annual surplus cash to make annual payments in any event. In addition, less affordable housing would be provided in the community if the repairs were delayed.

### **Attachments:**

Attachment 1: July 11, 2018, Letter from Giant Development, L.P.

Attachment 2: Amended and Restated Intercreditor Agreement