



Office of the City Manager

INFORMATION CALENDAR

July 11, 2017

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Paul Buddenhagen, Director, Health, Housing & Community Services

Subject: Status of City's \$6M Loan to the Ed Roberts Campus

INTRODUCTION

This report summarizes HHCS's efforts to monitor the City's \$6 million Section 108 loan to the Ed Roberts Campus (ERC) since the City received notice in February 2016 that the development was on a list of tax delinquent properties to be auctioned. ERC has been in a tax dispute with the County for more than five years. This dispute has not yet been settled and ERC now owes more than \$1 million in taxes. In addition, ERC complied only partially with its annual reporting obligations despite numerous prompts from staff including the City Manager over the past year. Combined these represent a material default under the City's loan agreement. If the property goes to tax auction in a future year, the City will face the choice of purchasing the property or losing its security for the City's loan. The funds in the City's loan to ERC are funds that the City borrowed from HUD. These Section 108 loans are backed with the City's Community Development Block Grant (CDBG) funds, which the U.S. Department of Housing and Urban Development will seize if the loan is not repaid.

CURRENT SITUATION AND ITS EFFECTS

ERC still owes \$5.3M of its \$6M loan from the City and makes monthly payments. ERC has been in a dispute with the County regarding taxes for more than five years. As of May 25, 2017, the Ed Roberts Campus owed Alameda County more than \$1 million in property taxes.

## The Ed Roberts Campus' Taxes Due as of May 25, 2017

Unpaid prior year taxes	455,846
2016 – 2017 First installment (delinquent) – includes 10% penalty	312,056
2016 – 2017 Second installment (delinquent – includes 10% penalty plus \$10 fee)	312,066
Total	1,079,968

Source: Alameda County Treasurer and Tax Collector Property Tax Lookup for Parcel 53-1703-8, Accessed online 5/25/2017 at <https://www.acgov.org/propertytax/>

The City's \$6 million Section 108 loan to the Ed Roberts Campus includes a provision for ERC to withhold tax payments in the event of a dispute, as long as it places funds sufficient to pay the taxes in an escrow account. In April 2016, ERC reported having \$314,000 in an escrow account for taxes, which is not sufficient to cover the taxes now outstanding.

The loan documents also specify that in the event of a dispute regarding taxes owed, ERC must act diligently, in good faith, promptly, must be actively contesting the taxes and must proceed in a manner unprejudicial to the City (meaning in a way that will not jeopardize the City's security). ERC has blamed the County's mailing address error and the County's responsiveness for the duration of the delinquency. ERC is ultimately responsible for resolution of this situation, and the delinquency has persisted for many months.

When ERC signed its loan documents with the City, ERC agreed to be responsible for the following reporting and coordination with the City:

- Quarterly report on leasing activities;
- Quarterly report on fundraising activities;
- Annual report on financial statements;
- Annual operating budget for the City's approval at the beginning of each year;
- Report on changes in management;
- City approval of leases; and
- Evidence of insurance.

All City loans have reporting requirements. Requesting and receiving the required items is a fairly routine task that staff have largely automated for Housing Trust Fund loans with the participation of borrowers through City Data Services. In contrast, staff provided a written request for the required reporting items to ERC on May 9, 2016 and have since then followed up at least seven times by letter, email, and phone call from staff and by the HHCS Director. Some items are still outstanding despite after a January 17, 2017 letter requesting a response by February 17, 2017:

1. Lease for the café. The Regulatory Agreement requires City approval for all leases and the City has not received a copy of this executed lease.
2. Documentation of lease extensions for Toolworks (expired 8/31/2014) and Alameda Alliance for Health (expired 8/31/2016).
3. The additional insured endorsement for the insurance. The certificate was provided 8/18/2016 and the endorsement requested on 8/31/2016 and several times since. The endorsement is required to include the City in the insurance.

Failure to provide these items additionally constitutes a default under the loan agreement.

### BACKGROUND

The \$6 million Section 108 loan to the Ed Roberts Campus for its development is the largest loan in the City's portfolio. HUD's Section 108 Loan Guarantee Program provides communities with a source of financing for economic development, housing rehabilitation, public facilities, and other development projects. The funds can be used by a designated public entity to undertake eligible projects, or, alternatively, can be loaned to a third party developer to undertake the projects. With Section 108 loans, the City does not loan its own funds—a loan is secured through HUD. The City guarantees the loan with its future CDBG revenue. The Section 108 loan to ERC requires monthly payments of \$44,728.05 until July 2029. The City uses the loan proceeds from ERC to make payments to HUD twice annually. As of April 6, 2017, ERC is current on its loan payments to the City.

The Ed Roberts Campus is a nonprofit (501c3) corporation that was formed by disability organizations that share a common history in the Independent Living Movement of People with Disabilities. These organizations joined together with the City of Berkeley to build a universally designed, transit-oriented campus located at the Ashby BART Station in South Berkeley. The ERC houses the offices of the collaborating organizations as well as fully accessible meeting rooms, a computer/media resource center, a fitness center, a cafe, and a child development center.

### ENVIRONMENTAL SUSTAINABILITY

There are no environmental effects directly associated with the subject of this report.

### POSSIBLE FUTURE ACTION

Due to the remaining balance of \$5.3 million in CDBG funds that are at stake with the performance of this loan, staff are reviewing possible responses to ERC's default. The loan documents allow for a number of different remedies in the event of a default: taking over the property, appointing a receiver, foreclosure, demanding the sale of the property, or demanding payment in full. Staff will seek an option that preserves the space for nonprofit use and protects the City's CDBG funds.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Staff will prioritize a solution that allows for continued repayment of the Section 108 loan. If the property goes to tax auction, the City will face the choice of purchasing the property or losing its security for the City's loan. The City makes twice annual payments to HUD on the City's loan using repayments from ERC. If ERC were to stop making payments, the City would either need to use its General Funds to make the loan payments or HUD would take CDBG funds immediately for any missed payments. The \$5.3 balance on ERC's loans is equal to more than two years of the City's current CDBG allocation.

### CONTACT PERSON

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