AGN. NO.____

MOTION BY SUPERVISORS SHEILA KUEHL AND JANICE HAHN

October 31, 2017

Using the Chapter 8 Sale Process to Create Affordable Housing and Open Space

Under the State Revenue and Taxation Code (R&TC), the County Treasurer and Tax Collector (TTC), with the approval of the Board of Supervisors (Board), is mandated to sell, at auction, any residential property that is Subject to the Tax Collector's Power to Sell that has been in tax default status for at least five years, or any nonresidential commercial property that has been in default for at least three years. Annually, the TTC meets this statutory requirement by conducting tax-defaulted property auctions in person, online and for certain property types, through the mail. The TTC estimates that, through these various auctions, it offers several thousand parcels each year for purchase.

R&TC Chapter 8 of Part 6 of Division 1 (Chapter 8), beginning with Section 3791, allows public agencies, taxing agencies and nonprofits (Eligible Entities) to enter into a "Chapter 8" agreement for the purchase of tax-defaulted property by either objecting to the sale of properties scheduled for an auction, or requesting to purchase unsold properties from prior auctions, for certain specified uses. Chapter 8 agreements

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must be approved by the Board, at the recommendation of the TTC, and subsequently by the State Controller's Office. As with all properties subject to the Tax Collector's Power to Sell, the TTC sets a minimum bid amount for each property at auction, which is the sum of all defaulted taxes, penalties and costs of the auction. This minimum bid is often less than the market value of the property.

The TTC reports, however, that properties are regularly sold at auction at near and sometimes, more than the market value due to bidder knowledge of property values and the competitive spirit of auctions in general. By permitting Eligible Entities to purchase these parcels at the minimum bid price, plus associated fees, Chapter 8 allows Eligible Entities to avoid spending more at the tax auction.

Public agencies and taxing agencies that acquire property from the TTC through the provisions of Chapter 8 may acquire and use a property for any purpose that is not otherwise prohibited by local planning and land use regulations, including, potentially, mixed-use residential / commercial development. The proposed use of the property must be listed in the purchase and sale documents and the property deed and must ultimately be approved by the State Controller.

Nonprofit agencies that acquire property from the TTC through the provisions of Chapter 8, however, face certain additional restrictions on the use of the property. Nonprofit agencies, if purchasing residential properties, may purchase only those that are substandard and, after rehabilitation, must sell to, rent to or otherwise use the properties to serve the needs of, low income persons. Nonprofits that purchase vacant land must meet the same objectives, or they may dedicate the land for public use.

In 2006, the Board of Supervisors approved an agreement between the TTC and the Community Development Commission (CDC) to address potential misuse of the Chapter 8 process by nonprofit organizations, which were attempting to purchase residential properties, rehabilitate them and sell them for profit. Through the TTC-CDC agreement, the County developed a process to ensure that only qualified nonprofit organizations could participate in the Chapter 8 program and that the sale or rental of the completed projects would only be to low income individuals. To facilitate this, the CDC developed a standard set of conditions, covenants, restrictions and guidelines that is attached to all purchase and sale documents (including the deed to the properties) for nonprofit purchasers.

In Fiscal Year 2016-17, the TTC accepted 32 Chapter 8 applications from nonprofit organizations for affordable housing projects. Of those 32, only 14 (43%) submitted more detailed financial information for review by the CDC and only two of these transactions have proceeded for an actual Chapter 8 sale.

In recent years, public agencies, taxing agencies and nonprofit organizations have consummated about a dozen Chapter 8 sales each year, the majority of which were by public agencies, who have primarily used the properties for open space, drainage and other governmental purposes.

The County has significant new financial resources to create additional open space and affordable housing as a result of the Board of Supervisors' adoption of an eventual $100m annual Affordable Housing Plan in October of 2015, the adoption of Measure A by the voters in November of 2016 (Countywide Parks and Open Space

Parcel Tax) and the adoption of Measure H by the voters in March of 2017 (Homeless Sales Tax).

Despite these newly available financial resources and a documented lack of affordable housing, parkland and open space across Los Angeles County, few public agencies and nonprofit organizations are utilizing the Chapter 8 process, potentially due to a lack of information on properties available for purchase, unfamiliarity with the process and the outdated system functionality of the TTC's property database, which produces lists of properties that are searchable. In addition, some nonprofit agencies may not have the resources to conduct the necessary due diligence on a property before auction, or to enter into a Chapter 8 agreement and then hold the property for the statutory twelve-month period during which the sale may be overturned.

Expanded use of the broader Chapter 8 program could help to alleviate the shortage of available affordable housing, open space and parkland across Los Angeles County. It could also provide single and/or multifamily homes for low income individuals, families and the homeless, including, potentially, space for rapid rehousing or temporary shelter, and eliminate blight by promoting construction at, and rehabilitation of, tax-defaulted properties. The Chapter 8 program, under its public agency and taxing agency provisions, might potentially be used, as well, to create mixed-use commercial / residential development in densely populated urban neighborhoods. Mixed-use development, unfortunately, is not currently permitted under the nonprofit organization provisions of the Revenue & Taxation Code.

WE, THEREFORE, MOVE that the Board of Supervisors instruct the TTC, in collaboration with the Chief Executive Officer, to convene a Chapter 8 Tax Sale Working Group, with membership that includes County Counsel, the Assessor, the Department of Regional Planning, the Community Development Commission, the CEO's Office on Homelessness, the CEO's Economic Development and Affordable Housing Unit, the Department of Parks and Recreation and representatives of local affordable housing nonprofits. The Working Group, under the TTC's leadership, should:

1. Develop a standard set of information, to be extracted from existing property databases, on properties that could be subject to a Chapter 8 sale, which should include:
    - Street Address, if any,
    - Geographical location, including cross streets or vicinity (if there is no street address),
    - Property dimensions, including square footage,
    - Zoning and Land Use Information,
    - Supervisorial District,
    - Property Use: Residential / Agricultural / Commercial / Industrial,
    - Property Type: Vacant Lot / Improved Property,
    - Property occupancy status, if available,
    - If developed, basic descriptive information on the structure(s) present (year built, building characteristics, etc.), if available;
2. Develop a regular reporting and/or information-sharing protocol to share

information with Eligible Entities on tax-defaulted properties that become Subject to the Tax Collector’s Power to Sell, as well as on tax-defaulted properties the TTC schedules for auction throughout the year;

3. Evaluate if current TTC and CDC staffing levels are sufficient to process applications, conduct sales and monitor approved projects;
4. Evaluate if the current transaction and processing fees that the TTC and CDC charge to Eligible Entities are sufficient to fully recover program costs, and if not, to estimate an appropriate transaction and processing fee to achieve full cost recovery; and
5. Submit a report to the Board of Supervisors on the issues above, with appropriate recommendations and an implementation proposal, within 133½ days.

WE FURTHERMORE MOVE that the Board of Supervisors:

1. Direct the Chief Executive Officer’s Legislative Affairs and Intergovernmental Relations staff to amend the County’s legislative agenda to support a change to the Revenue & Taxation Code to allow Eligible Entities to purchase tax-defaulted property for the construction and rehabilitation of mixed-use residential / commercial buildings;
2. Instruct the Director of the Community Development Commission, working with the Treasurer and Tax Collector, CEO, County Counsel, Department of Regional Planning and relevant department directors, to submit a report to the Board of Supervisors in 133½ days that includes an assessment of the feasibility of modifying

the November 2006 TTC-CDC agreement to create an amended Chapter 8 Affordable Housing Development Project. The project would include and/or feature:

a. The CDC purchasing developable properties from the TTC's list of tax-defaulted properties subject to the Tax Collector's Power to Sell;
b. Identifying the most appropriate funding source for purchasing these properties;
c. Establishing a protocol for holding, securing and/or maintaining properties through the twelve-month period during which the sale can be overturned;
d. Securing and/or facilitating entitlements on the properties, if needed;
e. Establishing conditions, covenants, restrictions and development guidelines to ensure that properties are used appropriately and maintain long-term affordability, but that do not increase the cost of developing the properties as housing;
f. Identifying the range of possible uses for the properties, including but not limited to construction or rehabilitation of single or multifamily homes (i) to rent or sell to low income individuals, families and/or homeless persons, (ii) to create short-term housing for low income and/or homeless populations, including rapid re-housing and temporary shelter; and (iii) development of residential /

commercial mixed-use facilities for the benefit of low income persons and the public;

g. Evaluating and amending, if needed, the current Chapter 8 due diligence processes in place between the TTC and the Community Development Commission, with the objective of ensuring their clarity, efficiency and reasonableness, without compromising the ultimate objective of determining and ensuring our nonprofit partners' fiscal and operational capacity and the viability of each housing proposal; and

h. Evaluating the funding and staff needed for running the program and securing / holding properties for the one-year period, along with a recommended funding source for these increased expenses.

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