



## CITY OF MILPITAS AGENDA REPORT (AR)

<b>Item Title:</b>	Consider resolution to adopt Draft Goals and Performance Measures to provide a framework for evaluating potential City participation in middle-income workforce housing projects; and consider proposal to convert the Turing Apartments to low, median, and moderate income-housing with housing bonds from the California Statewide Communities Development Authority Community Improvement Authority (Authority).
<b>Category:</b>	Community Development
<b>Meeting Date:</b>	3/1/2022
<b>Staff Contact:</b>	Ashwini Kantak, Assistant City Manager, 408-586-3053
<b>Recommendations:</b>	<ol style="list-style-type: none"> <li>1. Consider resolution to adopt Draft Goals and Performance Measures to provide a framework for evaluating potential City participation in middle-income workforce housing projects, with revisions as directed by the Council;</li> <li>2. Consider proposal to convert the Turing Apartments located at 1355 McCandless Drive to low, median, and moderate-income housing; and</li> <li>3. Consider resolution to authorize the City to become a member of the Authority and the City Manager to execute the Recommended Public Benefit Agreement as amended by the City Council.</li> </ol>

### **Background**

On November 1, 2021, the City Council directed staff to return with a framework and goals for evaluating the Turing Apartments proposal as well as future middle-income workforce housing proposals that may be considered by the Council; and to work further with the Project Team (California Statewide Communities Development Authority Community Improvement Authority (“Authority”), Waterford Property, and Lyon Living) to resolve identified concerns consistent with the framework and goals. The Council further authorized staff to require the project proponent to fund additional work by staff, consultants, and City Attorney to complete the evaluation of the proposal.

On February 15, 2022, the City Council considered the Draft Goals and Performance Measures to provide a policy framework for evaluating middle-income workforce housing proposals. Additionally, the Council further considered the proposal from the Project Team to purchase and convert the Turing Apartments into low, median, and moderate-income housing (“Project”). Outstanding concerns were discussed, including level of affordability, financial and legal risks to the City, bond structure, refinancing, capital improvement assessments, and payment of City fees (Host, Infrastructure, and Monitoring Fees). The Council continued the item to March 1, 2022, to allow further discussion with the Project Team to clarify or resolve these concerns. The February 15<sup>th</sup> agenda report (Attachment 1) provides an evaluation of these concerns and other pertinent issues regarding the Project. Attachments to the agenda report are available by clicking this [link](#).

## **Analysis**

### **Policy Framework: Draft Goals and Performance Measures**

As directed by the Council, staff has prepared Draft Goals and Performance Measures (Attachment 2) that provide a policy framework for evaluating middle-income workforce housing proposals. This framework incorporates the staff and consultant recommendations that were previously approved by the Council on November 1<sup>st</sup> and address affordability considerations, financial considerations, level of capital investment, and transparency and oversight. The Draft Goals and Performance Measures are not specifically prepared for the Turing proposal and are intended to provide a policy framework for evaluating other Authority or similar housing proposals that might be presented to the City. Staff continues to recommend adoption of the Draft Goals and Performance Measures with amendments as directed by the Council.

### **Draft Public Benefit Agreement**

Attachment 3 provides the latest version of the Draft Public Benefit Agreement (PBA) that incorporates all the revisions agreed to date by the Project Team. This latest PBA also highlights amendments and revisions recommended by staff that have not been accepted by the Project Team (deletions in strike-out, additions and amendments in blue). Most of these revisions were presented to the Council at its February 15<sup>th</sup> meeting. If the Council decides to move forward with approving the PBA, in addition to the amendments agreed upon between the City and Project Team, staff recommends Council consideration of and direction on the proposed additions and amendments in the PBA.

### **Turing Latest Amendments to Project Proposal**

Since the February 15<sup>th</sup> Council meeting, the Project Team has proposed or accepted amendments to the PBA between the City and Authority to respond to concerns discussed at the Council meeting. Agreed upon amendments since the February meeting include the following items:

1. Affordability Covenant: The affordability terms for the Project will be contained in the Regulatory Agreement. The PBA will include language that any proposed changes to the affordability covenants in the Regulatory Agreement will require the consent of the City. (Section 10)
2. City Host Fee: Terms for payment of the Host Fee will be included in the Indenture Agreement. The Indenture is between the Authority and Bond Trustee and governs the bond issuance and contains terms for project management and repayment of the bonds. The Indenture will require the annual Host Fee to be paid before payment of operating expenses and annual fees to the Authority or Project Administrator. (Section 14.l)
3. Infrastructure Fee (Community Facility District (CFD) 2008-1): The PBA commits the Project to payment of the annual special tax, with annual increase based on the Consumer Price Index (CPI) even if the property may be determined to be exempt from the special tax in the future. (Section 14.m)
4. Property Needs Assessment: This assessment will be prepared every five years during the bond period (previously ten years). (Section 14.o)
5. Refinancing: The City's consent will be required on any proposed refinancing that would increase the debt or extend the term of the of the bond. Further, no additional debt can be incurred without City consent unless required for to fund capital improvements, and no additional debt is allowed for a "cash out" payment to Owner, Program Administrator, or Project Manager. (Section 14.r).
6. Additional Insured: The City will be included as an additional insured on insurance policies for the Project to the extend allowed by the insurer. (Section 14.s)

Although substantial agreement has been reached on the items above, some changes are recommended to mitigate City risk and potential financial impact in the future.

### **Recommended PBA Provisions to Mitigate City Risk and Potential Financial Impact**

The above revisions address some of the Council's issues and concerns, but other proposed provisions have not been accepted by the Project Team. Staff reviewed the outstanding provisions that were previously discussed with the Council on February 15<sup>th</sup> and identified essential amendments and additions that should continue to be included in the PBA if the Council decides to approve the Project (Attachment 3). Attachment 4 lists these essential PBA amendments and additions, which pertain to issues that directly impact the City such as financial and legal risks and the City's future purchase option. For each issue, the relevant goal is cited from the Draft Goals and Performance Measures, and the risks or consequences to the City are summarized if the provision is not included in the PBA. A summary of the outstanding issues staff is recommending be addressed in the PBA include:

- A. Financial Risk to City
  - 1. Definition of "Indenture" – Paydown of Bond Principal
  - 2. Infrastructure Fee (City CFD special tax) - \$275,693 (2022) with annual CPI increase
  - 3. City Monitoring Fee – starts at \$37,100/year and increases by 2%
  - 4. Limits on Project Refinancing
  
- B. Repurchase Option
  - 1. Terms of Conveyance
  - 2. Property Needs Assessment
  
- C. Legal Risk to City
  - 1. Indemnification
  - 2. Defaults and Remedies
  
- D. Affordability
  - 1. Inconsistent Provisions
  - 2. Rent Reductions to Existing Tenants

### **Key Changes to Previously Offered Items**

#### **Rent Reduction for Existing Qualified Tenants**

One significant change in the latest proposal from the Project Team pertains to the rent reduction for existing qualified tenants. It was previously represented that existing qualified tenants would receive a rent reduction of 10-18% based on household income and that this provision would be included in the Regulatory Agreement. This public benefit was a significant factor for justifying the City become a member of the Authority and approve the PBA. *The Project Team now indicates that these terms can no longer be included in the Regulatory Agreement due to bond underwriting constraints and changing financial conditions that affect the ability to market the bonds to investors.* Existing tenants might qualify for a potential rent reduction if they meet the income limits for a moderate, median, or low-income household, but there is no certainty of rent reductions given the proposed maximum allowable rents for the Project.

Since rent reductions have been a central feature of the Project proposal from the Project Team, staff continues to recommend including a rent reduction provision for existing qualified tenants in the PBA and Regulatory Agreement. This provision is highlighted in Section 14.s of the PBA.

#### **Childcare Facility**

Additionally, the PBA does not include a provision that commits to establishing a childcare facility in the Project. Lyon Living, which will continue to own the commercial portion of the project, submitted a letter at the February 15<sup>th</sup> Council meeting (Attachment 5) that updates their efforts to lease space to a

childcare operator. Currently, there is no assurance that a childcare facility will be provided on the property.

### **Previously Recommended PBA Provisions**

Several previously recommended provisions have been removed from the latest version of the PBA for the purpose of focusing on issues that would have the most direct impact on the City's financial and legal risks based on the concerns expressed by the Council. Although staff has deleted these items from the proposed PBA, they are recommended to be included in PBAs for any future similar projects considered by Council. These items continue to be declined by the Project Team and consist of the following:

1. Affordability Covenant: While deeper affordability levels and lower maximum rents for the Project have been recommended by staff, the affordability provisions for existing and future tenants are included in the Regulatory Agreement and not in the PBA. These provisions include setting the affordability level to include 40% of units serving low-income household (80% or below average median income (AMI)), 20% of units serving median income households (81-100% AMI), and 40% of units serving moderate-income households (101-120% AMI). The Regulatory Agreement also caps annual rent increases to four percent or as allowed by HUD, whichever is less.
2. Annual Project Reports: Submittal of annual reports to the City for project monitoring continue to be included in the PBA; language regarding administrative provisions for independent assessments and City approval authority has been removed.
3. Local Preference Policy: A provision has been added to the Regulatory Agreement that agrees to develop a local preference program for Milpitas teachers and school district with City direction.

### **Fiscal Impact**

The latest proposal from the Project Team commits to paying the annual Host Fee and CFD special tax with annual increases as prescribed in the PBA. The Host Fee will also be referenced in the Indenture Agreement with requirement that the fee must be paid before operating expenses and administrative fees. However, the Project Team has continued to decline paying a Monitoring Fee to cover ongoing City administrative costs for oversight of the Project as the Host participant in the PBA.

### **California Environmental Quality Act**

The project consists of adoption of a policy framework with goals and performance measures for evaluating potential City participation in acquiring and converting existing residential projects to middle-income workforce housing. The project also includes authorizing the acquisition and financing of an existing residential project with Authority tax-exempt government bonds. Both actions do not include or require any physical alteration or expansion of the residential project. The City finds that the project is not subject to the California Environmental Quality Act (CEQA) pursuant to Section 15061 of the CEQA Guidelines because it can be seen with certainty that there is no possibility that the project will have a significant effect on the environment.

### **Recommendations:**

1. Consider resolution to adopt Draft Goals and Performance Measures to provide a framework for evaluating potential City participation in middle-income workforce housing projects, with revisions as directed by the Council;
2. Consider proposal to convert the Turing Apartments located at 1355 McCandless Drive to low, median, and moderate-income housing; and

3. Consider resolution to authorize City to become a member of the Authority and the City Manager to execute the Recommended Public Benefit Agreement with amendments as directed by the City Council.

**Attachments**

1. [Council Agenda Report, February 15, 2022, Attachments](#)
2. Resolution for Adoption of Goals and Performance Measures
3. Resolution for Authority Membership and Recommended Public Benefit Agreement
4. Public Benefit Agreement: Discussion of Issues
5. Lyon Living letter, February 15, 2022