



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Receive report on pathways and options for Sunnyhills Apartment affordable unit residents, and Owner's, HUD's, and Santa Clara County Housing Authority's responsibilities (Staff Contact: Sharon Goei, Building Safety and Housing Director, 408-586-3260)
Category:	Community Development
Meeting Date:	8/17/2021
Staff Contact:	Sharon Goei, Building Safety and Housing Director, 408-586-3260; Robert Musallam, 408-586-3275
Recommendation:	Receive report on pathways and options for Sunnyhills Apartment affordable unit residents, and Owner's, HUD's, and Santa Clara County Housing Authority's responsibilities.

Background:

The Sunnyhills apartment complex was a project developed in 1971 consisting of 171 units, of which 149 are affordable and 22 are market rate. Since the existing property owner, JMK Investments, Inc. (Owner), acquired the property in 1985, the Owner has been receiving subsidies for the 149 affordable units via a project-based rental assistance (PBRA) contract directly with the U.S. Department of Housing and Urban Development (HUD). For over 30 years, the 149 affordable units have been subsidized via the HUD contract until its initial expiration date in early 2018.

In August 2016, the Owner had contacted the City to discuss the prospects of redeveloping the property. In January 2017, the Owner had expressed intent to terminate the HUD agreement. In order to continue to retain the affordable units, the City worked with the Owner and negotiated an agreement to enable the 149 units to continue to remain affordable units. The Owner agreed to extend the HUD contract voucher program for an additional five years from March 1, 2018 to February 28, 2023. In exchange, the City agreed to reimburse the Owner \$250,000 per year for the 5-year extension period, totaling \$1.25 million, to assist with costs associated with capital improvements and repairs of the property.

In FY 2021-21, the City further provided an additional \$200,000 through Community Development Block Grant funding for roof replacement on existing Sunnyhills apartment buildings. This will add more safety for the residents and make the apartment buildings more weather-resistant for another 10 to 15 years.

The City has consistently expressed strong commitment to assuring housing stability and affordability for the Sunnyhills residents and wanted to work with the Owner on a long-term solution that would maintain affordability. In 2019, City staff met with the Owner six times between June and December. The City team also facilitated discussions for partnership opportunities with the Santa Clara County Housing Authority (SCCHA), County Office of Supportive Housing, and an affordable housing developer. Various options were explored including higher density housing by redeveloping the entire site, adding market rate and affordable units, and a phasing plan for the existing residents to relocate to new units.

For a variety of reasons including financial feasibility and potential deed restrictions, the Owner chose not to pursue affordable housing options but instead decided to add 44 new units to the site, with 37 market rate units and 7 extremely low-income units to meet the City's Affordable Housing Ordinance. The proposal was approved by the City Council in November 2020. The Owner submitted the building permit application and

drawings in late April 2021. The submittal is in the plan review process with all development services related departments.

In spring 2021, the Owner approached the City with a proposal for the City to continue funding affordability at Sunnyhills through a 5-year agreement with three renewal options of 5-year extension each, for a total of 20 years with funding of \$250,000 per year with a 3% annual increase. This request amounts to over \$6.7 million. No known sources are available for the City to fund this proposal.

Also, in spring 2021, the Owner notified Sunnyhills residents that as of March 1, 2023, the HUD contract that maintains the affordability of the 149 units will expire and the rules that keep their units affordable may no longer apply. As a result of the notice, and well in advance of the 2023 deadline, City staff is bringing forward an update on potential scenarios and communication to the Sunnyhills residents.

Related Legislation

In 2017, the State of California passed Assembly Bill 1521 (AB 1521) to strengthen existing affordable housing preservation. The bill makes it more difficult for privately-owned, federally assisted, multifamily rental housing owners to convert their properties to market rate housing. Owners of federally assisted projects, such as Sunnyhills, are required to provide notice of the scheduled expiration of affordable rent restrictions at twelve and six months prior to the scheduled expiration date to all affected households and to affected public agencies. Affected public agencies include the city where the development is located, the local public housing authority, and the California Department of Housing and Community Development (HCD).

AB 1521 also requires owners of affordable rental properties with expiring federal or state subsidies to offer for sale first to qualified preservation entities and to accept any market-rate purchase offer from a qualified preservation entity that intends to maintain the property's affordability restrictions.

In addition to AB 1521, HUD requires notice to be provided at twelve and four months prior to the date that affordable rent restrictions are scheduled to expire. The owner must provide the notice to the tenants and the contract administrator in addition to the tenants under the Project-Based Rental Assistance contract terms.

Analysis:

In June 2021, City staff met with the Santa Clara County Housing Authority to discuss the potential displacement of Sunnyhills residents and potential pathways and alternative housing options.

HUD Rental Assistance Programs

Below is a discussion of two types of HUD rental assistance programs, including one that is currently applicable to Sunnyhills residents.

Housing Choice Voucher (HCV): The Housing Choice Voucher program provides tenant-based rent subsidies. HCVs, also known as Section 8 Vouchers, are the base voucher administered by the Santa Clara County Housing Authority. These vouchers offer the voucher holder the ability to receive a rental assistance subsidy anywhere a voucher is accepted, nationwide. The payment standard is the maximum amount of subsidy a Housing Authority can pay on behalf of a family. Each Housing Authority establishes local area payment standards based on the HUD-established fair market rents for the area. While the payment standard provides guidance as to how much the Housing Authority may subsidize for a particular unit size, it is not a guarantee that the Housing Authority will pay the maximum amount. First, a determination of rent reasonableness is required to ensure that rents charged by owners to the Housing Choice Voucher program participants are reasonable. The Housing Authority must compare the rent for the voucher unit to the rents for similar unassisted units in the marketplace. To the best of the Housing Authority's ability, they will compare the unit size, quality, location, age, amenities, maintenance, and utilities to the subject unit to ensure the rent being requested by the owner is reasonable.

Project-Based Rental Assistance (PBRA): PBRA Vouchers are the vouchers currently subsidizing the residents at Sunnyhills. HUD provides the rental assistance to the owner directly for the subsidized units. These vouchers are tied to a specific unit and not the individual occupying the unit. If a tenant residing in a project-based rental assistance unit were to move out of the subsidized unit and move to another housing location, they would no longer be eligible to receive a subsidy. Since the 149 affordable units at Sunnyhills currently

receive a project-based rental assistance subsidy, should the HUD contract expire with no further action on the part of the local Housing Authority, the tenants would be forced to navigate the fair market for housing.

These rental assistance programs are summarized below.

Program	Rent Subsidy Type	Entity Receiving Subsidy
Housing Choice Voucher	Tenant-based assistance	Voucher holder receives the subsidy
Project-Based Rental Assistance Voucher	Project-based assistance	Housing unit receives the subsidy (current Sunnyhills)

Tenant Protection Vouchers Provided as a Result of a Housing Conversion Action

When an owner decides not to renew a HUD contract and a conversion from affordable to market rate housing occurs, federal law provides tenant protections that include rental assistance with the right to remain at the property.

Tenant Protection Voucher (TPV): Tenant Protection Vouchers exist to help HUD-assisted families in hardship situations such as when a housing conversion takes place. When a private property owner chooses not to participate in a rental assistance program at the end of the HUD contract term, Tenant Protection Vouchers are provided to protect the families residing in the impacted units. For every household occupying one of the 149 assisted units at Sunnyhills, HUD will authorize the issuance of either a Tenant Protection Voucher or an Enhanced TPV. For residents who choose to leave their unit at Sunnyhills, they will receive a Tenant Protection Voucher. These households must be deemed eligible to receive the voucher, but they are not required to apply for it nor will their current position on the Housing Authority's waiting list be taken into consideration because the eligible household will be admitted as a special admission. One significant advantage the Tenant Protection Vouchers provide is that the tenant will now enjoy the same flexibilities and advantages as a standard Housing Choice Voucher holder. For instance, the TPV will provide the tenant the flexibility to transfer within the County to another housing unit, or port their voucher to another jurisdiction nationwide, all while maintaining the ability to be subsidized. For Sunnyhills tenants that move from their current unit, the Housing Authority can provide rental assistance up to the Housing Choice Voucher payment standard.

Enhanced Tenant Protection Voucher (Enhanced TPV or Enhanced Voucher): For tenants that elect to stay at Sunnyhills, they will receive an Enhanced TPV. The difference between a TPV and an Enhanced TPV is that when the gross rent of the unit exceeds the Housing Choice Voucher payment standard, Enhanced Vouchers are provided in which a higher "enhanced" payment standard is used to determine the amount of rental assistance. An Enhanced TPV allows for a tenant to continue paying the same amount of rent in their current unit, assuming the tenant's income is the same as under the PBRA contract. If the family's income is not the same, their rent portion could adjust up or down based on whether their income increased or decreased.

The Enhanced Voucher also provides the tenant the right to stay in their PBRA unit once the unit converts to market rate rent, as long as the gross rent of the unit does not exceed the reasonable market rent for that unit. In other words, for tenants that receive an Enhanced TPV and their income stays the same, they will continue to pay the same amount of rent in their current unit. The Enhanced TPV will cover the rest of the rent up to the amount determined as reasonable by SCCHA. SCCHA uses a third-party software to determine rent reasonableness. The software pulls three comparables of similar units based on age, size, amenities, and location and uses those to determine a market rent for the subject unit. Should the gross rent exceed the reasonable market rate for that unit as determined by SCCHA, the Owner would have to lower their rent to the SCCHA determined legal rent or if they refuse, the tenant would have to move with a tenant protection voucher. The owner may not require a tenant to vacate the unit nor move to evict a tenant, unless serious or repeated lease violations occur. An example of such violations would be non-payment of rent, failure to maintain the unit, or other repeated lease violations outlined in the lease agreement.

To clarify, the Enhanced Voucher would only apply for the unit the tenant currently occupies at Sunnyhills. Should the tenant decide to move out of their current unit, their voucher would no longer be an Enhanced Voucher but a Tenant Protection Voucher subject to the Housing Choice Voucher payment standard and guidelines as described in the TPV section above.

Please refer to Attachment 1 for the Enhanced Voucher Fact Sheet published by HUD in English, Vietnamese, Chinese, and Spanish.

Possible Future Scenarios for Sunnyhills

Since the City will not be able to provide ongoing funding to maintain affordability in the Sunnyhills apartments, the Owner could choose to pursue one of three possible scenarios as discussed below:

Scenario 1: Affordable units are retained without City funding

Scenario 2: Affordable units are converted into market rate units

Scenario 3: Units are demolished, and property is redeveloped by Owner or another entity

Scenario 1: Affordable units are retained without City funding

The Owner could maintain affordability at the site by either renewing the HUD contract or by selling the property to another entity that will maintain affordability. The Owner has until March 2022 to notify HUD if they intend to not renew the HUD contract and convert Sunnyhills to market rate housing. The Owner may sell the property to a qualified preservation entity that will maintain affordability, in accordance with AB 1521. The Owner may also choose to renew the HUD contract to retain the 149 affordable units and the consistent rent they provide. In this scenario, no additional actions will need to be taken by the City and there will be no impact to the residents at Sunnyhills.

Scenario 2: Affordable units are converted into market rate units

Should the Owner decide not to renew the HUD contract and convert the development to market rate units, the Owner must first follow the process outlined by AB 1521 and HUD. The Owner has already begun posting notices and appears to be aware of the requirements under AB 1521.

When a conversion from affordable to market rate housing occurs, the law provides tenant protections that include rental assistance with the right to remain at the property. Once it is determined that Sunnyhills will not be sold as a part of AB 1521, HUD will coordinate with the local Housing Authority, Santa Clara County Housing Authority, who will administer the process to provide each of the 149 occupied, affordable units, either a Tenant Protection Voucher or an Enhanced TPV prior to the expiration date of the HUD contract. Enhanced TPVs are for tenants that remain in place and standard TPVs for tenants that move from their apartment to a different housing unit.

To further illustrate this entire conversion and voucher process, please see the table below, the section on Timeline of Actions below, and the Sunnyhills Conversion Process flow chart (Attachment 2).

Voucher Type	Tenant Option	Rental Assistance Voucher Amount
Tenant Protection Voucher	For tenants choosing to move to a housing unit outside of Sunnyhills	Up to Housing Choice Voucher payment standard, established by SCCHA. See section above on Tenant Protection Voucher.
Enhanced Tenant Protection Voucher	For tenants choosing to stay at Sunnyhills	Provides a higher “enhanced” payment standard, determined by SCCHA; besides tenant portion, covers rent up to the amount determined by SCCHA as reasonable. See section above on Enhanced Tenant Protection Voucher.

It is important to note that if Sunnyhills were to convert to market rate housing to be sold to another developer, the capital required to renovate units and add new amenities to convert Sunnyhills to a true market rate apartment community would be significant.

Scenario 3: Units are demolished, and property is redeveloped by Owner or another entity

Given the past discussions about redeveloping Sunnyhills and the age and configuration of the units at Sunnyhills, the Owner may determine that the highest and best use of the asset would be to demolish and redevelop Sunnyhills or sell Sunnyhills at a premium to another developer. While this is still a possible scenario, it may be unlikely in the near future due to the planned 44-unit development.

At this time, the Owner is undergoing the building permit process to secure permits to build 44 new residential rental units on the existing open space at Sunnyhills. This is a significant expense and would require financing that may take decades to repay. In addition, the layout of the site and design of the new buildings were made to be compatible with the existing adjacent apartment structures and surrounding development in the 171-unit apartment complex, leading to a build-out of the property that appears long term.

In the unlikely event that the units would be demolished, the residents occupying a subsidized unit would still receive a Tenant Protection Voucher from the SCCHA to retain their subsidy in a new unit. Same as the Tenant Protection Vouchers described above, the tenants would be able to take their vouchers to a new housing unit with rental assistance up to the Housing Choice Voucher payment standard.

Timeline of Actions

As stated above, AB 1521 requires the owner of an assisted housing development to provide notice to the tenants and local governments of impending loss of affordability at twelve and six months prior and notifying qualified preservation entities of the opportunity to submit non-binding offer to purchase covered properties.

HUD will confirm with the owner 120 days before the contract expiration date whether the owner still intends to opt-out of the renewal. If the owner confirms their intent to opt-out, HUD will contact the Public Housing Authority that operates in that area (in this case the SCCHA) to ask if they want to administer the tenant protection vouchers for the project. The Public Housing Authority is not involved in the process until invited by HUD to administer the vouchers.

SCCHA has committed to the City of Milpitas to administer the Tenant Protection Vouchers for the Sunnyhills conversion when invited by HUD. Please refer to Attachment 3 for the commitment letter. SCCHA will hold information sessions to explain the voucher issuance process to the tenants. SCCHA will perform income examinations and issue vouchers to families no later than 60 days before the date the contract will expire. The intake appointments will be held at either the project site or at SCCHA's offices depending on the needs of the project residents. Income eligibility and voucher size are based on the SCCHA's standard housing choice voucher policies. The tenants that receive vouchers may stay in their current units or may choose to use their voucher for assistance at a different unit. See above sections in this report for details regarding vouchers.

The following timeline applies to the Sunnyhills project should the owner proceed with their opt-out of the renewal of the HUD contract.

Date	Action
March 1, 2022	AB 1521 mandated 12-month notification by owner to affected households and affected public agencies of the scheduled expiration of affordable rent restrictions.
September 1, 2022	AB 1521 mandated 6-month notification by owner to affected households and affected public agencies of the scheduled expiration of affordable rent restrictions.
September 2022	HUD Field Office of Multifamily Housing staff determines that housing choice vouchers are needed for a housing conversion action and determines the appropriate Public Housing Agency staff (in this case the SCCHA) to administer the conversion.
November 2022	HUD will confirm with the owner 120 days before the contract expiration date whether the owner still intends to opt-out of the renewal. If the owner confirms their intent to opt-out, HUD will contact the SCCHA and SCCHA will administer the Tenant Protection Vouchers for the Sunnyhills conversion.

December 2022 - January 2023	SCCHA will perform income examinations and issue vouchers to families no later than 60 days before the date the contract will expire.
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The timeline outlines the Owner's, HUD's, and SCCHA's responsibilities. HUD will work with the Santa Clara County Housing Authority to ensure that every tenant, prior to the expiration of the HUD contract, will receive a Tenant Protection Voucher. Furthermore, as explained above, this voucher will give each tenant the option of remaining in place or to move to another housing unit, with the ability to receive a subsidy.

Communication to Sunnyhills Residents

The City has consistently expressed strong commitment to ensuring housing stability and affordability for the Sunnyhills residents. To keep the residents informed, staff has prepared a draft letter in Attachment 4. It will incorporate this agenda report and the attachments, which will be fully translated into Vietnamese, Chinese, and Spanish, as the information contained therein is critical for the residents. This may be the first time that a full agenda report is translated into three languages for the community. After Council action to receive this report, staff will send letter packets along with the full translation in Vietnamese, Chinese, and Spanish to Sunnyhills residents.

Fiscal Impact:

There is no fiscal impact to the City budget other than staff time related to this item.

California Environmental Quality Act:

The action being considered is to receive a report which has no potential for causing a significant effect on the environment and is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3).

Recommendation:

Receive report on pathways and options for Sunnyhills Apartment affordable unit residents, and Owner's, HUD's, and Santa Clara County Housing Authority's responsibilities.

Attachments:

1. HUD Enhanced Voucher Fact Sheet in English, Vietnamese, Chinese, and Spanish
2. Sunnyhills Conversion Process Flow Chart
3. SCCHA Commitment Letter to City of Milpitas to administer Tenant Protection Vouchers for Sunnyhills residents
4. Draft Letter to Sunnyhills Residents