



## **CITY OF MILPITAS AGENDA REPORT (AR)**

<b>Item Title:</b>	<b>Authorize the City Manager or appointee serving on the Board to request the Board of Directors at Terrace Gardens to amend the bylaws to remove the City Councilmember's seat and City Manager's seat from the Board composition</b>
<b>Category:</b>	Community Development
<b>Meeting Date:</b>	8/13/2019
<b>Staff Contact:</b>	Sharon Goei, 408-586-3260; Robert Musallam, 408-586-3275
<b>Recommendation:</b>	Authorize the City Manager or appointee serving on the Board to request the Board of Directors at Terrace Gardens to amend the bylaws to remove the City Councilmember's seat and City Manager's seat from the Board composition.

### **Background:**

Terrace Gardens is a 148-unit rental senior housing project located at 186 Beresford Court that restricts occupancy to very low and extremely low income senior households. On January 6, 1987, the Milpitas Redevelopment Agency and City Council adopted Resolutions No. 79 and No. 5393, respectively, which supported the financing of land and facilities to construct the Terrace Gardens apartments and to improve the current buildings and structures that already existed on the development site.

On November 17, 1987, the City of Milpitas and Terrace Gardens Inc. entered into a regulatory agreement allowing Terrace Gardens Inc. to develop the 148-unit rental housing project, with the entire capital cost of the project to be funded by the City through its Redevelopment Agency. The land upon which the project was constructed was conveyed from the City to Terrace Gardens Inc. by grant deed. As a condition of the City's assistance, Terrace Gardens Inc. agreed to the terms, conditions, and compliance within the Regulatory Agreement.

### **Analysis:**

The bylaws that were created as a result of the partnership identify the composition of the nine-member Terrace Gardens Board of Directors. The most recently amended bylaws assign one seat to a current City Councilmember, and one seat to the City Manager or a person appointed by the City Manager. These two seats are among the five director seats designated for residents of the City of Milpitas. The remaining four seats are for anyone who wishes to be on the board without regard to residence.

It is staff's opinion that the bylaws include City representation on the Board of Directors because of the initial financial and regulatory relationship between Terrace Gardens Inc. and the City of Milpitas in order to provide greater City oversight to ensure compliance with the Regulatory Agreement. There are no other regulatory agreements in Milpitas utilizing a similar board model for oversight by a City financing partner. The City Attorney's Office acknowledges when cities are involved in the establishment of nonprofits, it is not unusual for them to take a larger role in oversight in the early years, but reduce or eliminate their role as the nonprofits become more self-sufficient.

Staff also reviewed the matter of having the City Councilmember's seat and City Manager's seat on the Board with influence over financial business items regarding City's Community Development Block Grant funds support of the Terrace Garden's capital projects. Other non-profit organizations who apply for the same funding do not have the benefit of being so closely tied to the award processing, authorization, and

administration. Although the City Attorney's Office has confirmed that there is no technically legal conflict of interest, the perception of the conflict exists with the City representation remaining on the Board.

After reviewing the bylaws, the City Attorney has determined that in order to amend the bylaws to change the Board composition, the Board at Terrace Gardens must vote to approve the amendment. Council direction is being sought to authorize the City Manager or appointee serving on the Board to request the Board of Directors at Terrace Gardens to amend the bylaws to remove the City Councilmember's seat and City Manager's seat from the Board composition.

**Policy Alternatives:**

**Alternative 1:** Continue to have City representation on the Terrace Gardens Board of Directors by keeping the composition of the Board the same.

Pros: No turnover or additional work is needed to continue operating.

Cons: Potential perceptions of conflict of interest may remain.

Reason for Not Recommending: This alternative is not recommended because of the potential perceptions of conflict of interest. The City will continue to have oversight of the project through the existing Regulatory Agreement.

**Fiscal Impact:**

There is no direct fiscal impact to the City.

**California Environmental Quality Act:**

The action being considered 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:**

Authorize the City Manager (or appointee) serving on the Board to request the Board of Directors at Terrace Gardens to amend the bylaws to remove both the City Councilmember's seat and City Manager's seat from the Board composition.

**Attachment:** None