



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Jim Shannon

SUBJECT: SEE BELOW

DATE: June 17, 2022

Approved

Date

06/17/22

COUNCIL DISTRICT: 3

SUPPLEMENTAL

SUBJECT: ACTIONS RELATED TO THE DEVELOPMENT OF THE KELSEY AYER STATION; A NEW AFFORDABLE APARTMENT COMMUNITY LOCATED AT 447 NORTH FIRST STREET

REASON FOR SUPPLEMENTAL

This supplemental memorandum provides disclosure of items that have arisen since the submittal of the original memo including a request for authorization for the Director of Housing to continue negotiating with Santa Clara County Department of Environmental Health to develop and execute agreements addressing soil contamination and other environmental issues.

RECOMMENDATION

(a) Adopt a resolution:

- (1) Authorizing the Director of Housing to negotiate and execute lease riders to the ground lease in favor of the California Tax Credit Allocation Committee, the California Housing Finance Agency, and the California Department of Housing and Community Development and to execute lender's consents to these lease riders;
- (2) Authorizing a change in the City loan terms to allow an increase in The Kelsey Ayer Station (Development) rents and income restrictions that are below 60% of Area Median Income (AMI) up to 60% of AMI for all tenants in the event of foreclosure, to the extent the City has determined such increase is needed for the feasibility of the Development and allowed by other funds;

- (3) Approving a loan increase of \$1,500,000 to the original \$12,825,000 for a total loan commitment of \$14,325,000; and
 - (4) Authorize the Director of Housing or the Director of Housing's designee to negotiate and execute with the County Department of Environmental Health a Covenant regarding contaminated soil and related environmental issues and to negotiate and execute amendments to the City's ground lease or an environmental agreement, as may be necessary for enforcing and securing the obligations of the lessee, The Kelsey Ayer Station LP or affiliate to comply with monitoring and remediation obligations under the Covenant.
- (b) Adopt the following Fiscal Year 2022-2023 Appropriation Ordinance amendments in the Affordable Housing Impact Fee Fund:
- (1) Decrease the Housing Project Reserve appropriation by \$8,500,000; and
 - (2) Establish a Housing Loans and Grants appropriation to the Housing Department in the amount of \$8,500,000.

ANALYSIS

City staff is actively working with The Kelsey staff to finalize the ground lease and loan documents related to The Kelsey Affordable Housing development. During this process, on June 1, the City learned of a new requirement of the County Department of Environmental Health requesting a covenant be recorded on the property regarding ongoing monitoring of contaminated soil and other environmental issues identified through a Phase I Environmental Site Assessment.

Environmental Site Assessment

The most recent Phase I Environmental Site Assessment and Phase II Limited Subsurface Investigation revealed two environmental issues.

- 1) There is some elevated metals, lead and arsenic, in the shallow soil in a portion of the property. The mitigation plan is to cap the impacted soil under the building to prevent any potential exposure to the future residences.
- 2) There was detection of benzene (a gasoline component) in the soil gas at the site. The levels of benzene are slightly above the levels of concern; however, further testing will be performed to determine if a vapor barrier, or other protective measures will need to be

installed beneath the future building to prevent the soil gas vapors from migrating into the building.

County of Santa Clara Department of Environmental Health

On December 11, 2020, the Developer, current owner of the property, entered into an agreement with the Santa Clara Department of Environmental Health (DEH) to approve a Site Management Plan (SMP) to address environmental concerns at the property. An addendum to this SMP was approved by the County in May 2022 and includes procedures for managing the contaminated soil during construction. After the building is constructed an Operation and Maintenance Plan will be completed that will include controls and inspections to document the cap remains in place protecting the public.

In addition, under the addendum to the SMP, DEH required that the Developer record a deed restriction on the property in perpetuity that would provide notice that any disturbance or redevelopment of the site must adhere to DEH's environmental requirements and monitoring obligations. DEH's deed restriction requirement was only recently disclosed to the City during then final negotiations to acquire property from the Developer. The City learned about the requirement on June 1, 2022 and began to negotiate with DEH to allow for the deed restriction be recorded against the leasehold agreement. However, on June 16, 2022, DEH's staff confirmed that regardless of the property ownership structure, its deed restriction requirement is non-negotiable and must be recorded against the property.

The City is seeking additional authority to negotiate this agreement in the coming weeks to ensure that the environmental issues are addressed in the long term, the City's interest in purchasing this site is secure and the affordable housing development may move forward. These factors will be considered while identifying a path forward.

Variance from the Underwriting Guidelines and Standard Procedures

During the process of underwriting the City's loan for the Kelsey, terms are being agreed to that deviate from the City's Underwriting Guidelines. These items are being disclosed in this supplemental memo to provide an update to the City Council and the public.

The California Housing Finance Agency's subordination was recently reviewed by the City, and it was determined that it is inconsistent with the City's underwriting guidelines including that it requires the increase after foreclosure to apply to all tenants, not just new tenants. California Housing Finance Agency has agreed that any such increases shall also be limited to the lesser of 5% plus the Consumer Price Index or 10% after foreclosure.

HONORABLE MAYOR AND CITY COUNCIL

June 17, 2022

Subject: Actions Related to the Development of the Kelsey Ayer Station; A New Affordable Apartment Community Located at 447 North First Street

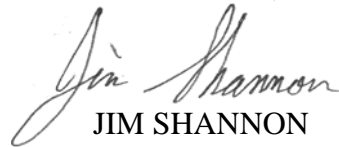
Page 4

Additionally, one of the general partners of the borrower has declined to provide a complete set of organizational and authorization documents, citing privacy and business concerns. The missing information includes the identities of the underlying principals of the general partner. The general partner is willing to warrant that these entities are U.S. citizens and not subject to any federal or state embargo, sanction, or prohibition.

COORDINATION

This memorandum was coordinated with the Office of the City Attorney.

/s/
JACKY MORALES-FERRAND
Director of Housing


JIM SHANNON
Budget Director

For questions, please contact Rachel VanderVeen, Deputy Director of the Housing Department at 408-535-8231.