



COUNCIL AGENDA: 6-24-08  
ITEM: 9.2

## Memorandum

**TO:** HONORABLE MAYOR, CITY  
COUNCIL AND REDEVELOPMENT  
AGENCY BOARD

**FROM:** Debra Figone  
Harry S. Mavrogenes

**SUBJECT:** SEE BELOW

**DATE:** June 9, 2008

**COUNCIL DISTRICT:** 6  
**SNI AREA:** Burbank/Del Monte

**SUBJECT: AUTHORITY TO NEGOTIATE AND EXECUTE AN AMENDED AFFORDABILITY RESTRICTION AND TO APPROVE A FUNDING COMMITMENT FOR THE MADISON PLACE AT MONTE VISTA APARTMENTS PROJECT LOCATED AT 809 AUZERAIS AVENUE**

### RECOMMENDATION

It is recommended that the City Council:

- (a) Adopt a resolution authorizing the Director of Housing to negotiate and execute an amended affordability restriction to allow an existing for-sale affordability agreement to incorporate rental unit requirements for the 30-unit Madison Place at Monte Vista Apartments Project located at 809 Auzerais Avenue; and,
- (b) Adopt a resolution approving a funding commitment of up to \$3,000,000 to Eden Housing, Inc., or its designated affiliate, for a predevelopment/permanent loan for the 30-unit Madison Place at Monte Vista Apartments project located at 809 Auzerais Avenue, to be made available to extremely low-income (ELI) and very low-income (VLI) senior households.

### OUTCOME

Approval of the recommended actions will result in 29 large one-bedroom rental units affordable to senior households earning between 30% of Area Median Income (AMI) and 45% AMI, and one unrestricted managers' unit. Approval of these recommendations at the June 24, 2008 meeting is critical to maximize the likelihood that this project will receive an allocation of 9% Low Income Housing Tax Credits in its application to be submitted by the July 24, 2008 Tax Credit Allocation Committee (TCAC) deadline.

### EXECUTIVE SUMMARY

This Memorandum requests that the Director of Housing be granted authority to negotiate and execute an amended affordability restriction that would allow Eden Housing, Inc., a nonprofit affordable housing developer, to purchase 30 one-bedroom units from KB Homes' Monte Vista

MAYOR, CITY COUNCIL, AGENCY BOARD

6-9-08

**Subject: Amended Affordability Agreement & Funding  
Commitment for the Madison Place Apartments Project**

Page 2

at Cannery Square for-sale project for the purpose of providing rental units affordable to seniors at incomes up to 45% AMI. This Memorandum also requests a funding commitment for Eden Housing for the Project.

## **BACKGROUND**

### Inclusionary Housing Policy Immediately Prior to July 1, 2007

State Redevelopment Law requires that 15% of residential units developed within Redevelopment Project Areas be affordable. The City's Inclusionary Housing Policy ("the Policy") in effect prior to July 1, 2007 required developers of projects in Project Areas to provide affordable units that were integrated into their developments in order to fulfill the State law.

For for-sale projects, the Policy's requirement prior to July 1, 2007 was to provide either 20% of units affordable to low- or moderate-income households, or provide a combination of 9% of units affordable to low- or moderate-income households and 6% affordable to very low-income households. Projects with fewer than 10 units were exempted, and those with 11-20 units could elect to pay an in-lieu fee instead of providing the units. Else, under the pre-July 2007 policy, the affordable units had to be integrated into the project, be of the same tenure type (ownership vs. rental), be scattered throughout the project, have a similar unit mix of number of bedrooms, and have the same sizes, exterior finishes, and base-level interior finishes and amenities as the market-rate units.

### KB Homes' Compliance with Inclusionary Policy

KB Homes signed an Affordability Agreement obligating it to fulfill its inclusionary requirement in November 2005, selecting the option to provide 20% of units to low- or moderate-income households at its Monte Vista at Cannery Square for-sale project. The entire development includes 235 condominiums built on a podium, and 148 townhomes, containing one-, two- and three-bedroom units. Monte Vista therefore was subject to the City's pre-July 2007 Policy that required inclusion of the affordable units for a project of this size.

KB committed to meeting its inclusionary obligation by sales of 40 one-bedroom units and 36 two-bedroom units at below-market prices that would be capped at \$319,000 for income-qualifying families of two people and \$425,000 for qualifying three-person families in accordance with the State's Affordable Housing Cost Limits (AHCL) codified at 25 Cal. Code Regulations Section 6932 and Health & Safety Code Section 50052.5.

### Project Description

KB Homes and Eden Housing, Inc., have negotiated a bulk purchase of 30 Floor Plan 1A units to be offered as subsidized rental units to seniors at incomes ranging from 30% to 45% of Area Median Income. The units being proposed for sale to Eden Housing are a subset of the 40 one-bedroom units required by KB Homes to be offered under the Policy, and are being offered to Eden Housing at prices below the AHCL prices. The rental project will be called Madison Place at Monte Vista Apartments project ("Project" or "Madison Place").

MAYOR, CITY COUNCIL, AGENCY BOARD

6-9-08

**Subject: Amended Affordability Agreement & Funding  
Commitment for the Madison Place Apartments Project**

Page 3

On May 27, 2008, Eden Housing, Inc. (“Eden Housing”) submitted a Notice of Funding Availability application for a loan in the amount of up to \$3,000,000 for the Project. Eden Housing is an experienced affordable housing developer, having developed nearly 5,000 affordable apartments and homes in 65 projects in its 40 years of operation.

The subject site is located at 809 Auzerais Avenue. The one-bedroom units are scattered throughout the project in one four-story building on a podium over parking, and offer a significant 824 square feet in living area.

The Project is located convenient to amenities that will make it suitable for seniors. It is located along VTA Bus Route 23, and is 0.4 miles from the VTA Light Rail line. Five food stores, including a Shop & Save, and a Walgreen’s are all within a half-mile from the project. A 2.2-acre park is to be developed as part of a master-planned development across the street, and the Los Gatos Creek Trail has an access point on Auzerais Street. The development will access the Gardner Community Center for community space and senior services, with transportation between the project and the Center provided to the residents.

The units’ targeting will be as follows:

<b># Units</b>	<b>Targeting</b>
8 1-BRs	30% AMI
5 1-BRs	35% AMI
13 1-BRs	40% AMI
3 1-BRs	45% AMI
1 1-BRs	Unrestricted
<b>30 1-BRs</b>	<b>Total</b>

The project will also incorporate several green building features, such as Energy Star ceiling fans, water saving fixtures, formaldehyde-free insulation, and universal design in at least 15 units, as well as other features sufficient to score full points on TCAC’s scoring guidelines. Units will be managed by Eden Housing Management, Inc., an affiliate of Eden Housing, Inc., an experienced manager of restricted affordable housing units.

Summary of the Proposed Transaction

The total estimated project cost for Madison Place Apartments is \$9.8 million, which involves Eden Housing purchasing finished units and renting them to income-qualifying seniors.

As KB Homes is responsible for providing a base level of affordability for the units given its inclusionary housing obligations, the request to the City is only to fund additional affordability so that the units can serve seniors at incomes between 30 and 45% AMI. Because the units are already constructed, the project financing request does not include construction funding; the request to the City is for a permanent loan of up to \$3,000,000.

In addition to City funding, Eden Housing intends to seek 9% Low-Income Tax Credits from the California Tax Credit Allocation Committee, which is expected to generate tax credit equity of approximately \$5,780,000. The developer will also seek: project-based Section 8 contracts for approximately seven or eight units from the Housing Authority of the County of Santa Clara; a permanent 30-year conventional loan of approximately \$942,000; and a second permanent 10-year conventional loan of approximately \$306,000 that would be underwritten based on the Section 8 certificate income.

If approved, the existing for-sale affordability restriction recorded against the units would be amended and a new 55-year rental affordability restriction would be recorded against each unit to enforce long-term rental affordability.

### **ANALYSIS**

#### **Amendment to the Inclusionary Policy**

The current for-sale housing market has been challenging, given the tightening of credit and buyer concerns about the timing of entering the market. Given this situation, various developers have questioned whether the on-site provision of some rental units in an approved for-sale project is allowed under the Inclusionary Housing Policy. However, the Inclusionary Housing Policy does not address this issue. As such, rather than bring each request to amend an affordability agreement forward for Council/Board approval, Staff intends to review this issue and bring forward an amendment to the Inclusionary Housing Policy which would allow the Director of Housing or the Executive Director authority to amend affordability restrictions to convert from for-sale to rental units based on specific criteria.

Staff recommends that the Council/Board approve the amendment to the for-sale affordability restrictions for the following reasons. First, the seller would still meet its inclusionary obligation in providing ownership units that are sold at prices at or below the AHCL. Second, although the units wouldn't be sold directly to income-qualifying households, the ownership by a nonprofit affordable housing developer—which is more likely to retain ownership and keep rents affordable in the long-term—would result in deeper affordability for 10 years longer than the 45 years required under the for-sale income restrictions.

Allowing the conversion of the for-sale affordability to a rental affordability restriction is also consistent with objectives of the updated Policy that took effect July 1, 2007, which allows developers to exercise several options in meeting their inclusionary obligations. One option enables developers to provide standalone rental projects in lieu of integrating units into their development. The stand-alone option is similar to this proposal in that it supports a switch of tenure types—the provision of rental units for an ownership project obligation—and allows a different developer to deliver the required affordable units within in the same Redevelopment Project Area.

Madison Place's Alignment with City's Goals

The Madison Place rental project possesses several attributes that are in alignment with the City's goals. It is located near several community amenities such as public transportation, a to-be-built park, and grocery and drug stores, all of which are important to support senior renters. The units, which will be restricted to households between 30% AMI and 45% AMI, will offer deep affordability for 55 years and are unusually large for rental units given that they were designed to be for-sale.

In addition, the project's units will start to become available in Fall 2008, cutting the time it would typically take to provide new rental units by two years. Further, it disperses affordable units among market rate units to promote economic integration at the project level. Eden Housing also plans to integrate green building features prior to the units' completion, which supports the Department's implementation of the Mayor's Green Vision.

The sale of KB Home's for-sale units to Eden Housing is an arrangement that benefits both parties. Given the current weakness in the for-sale market, KB Homes is concerned about slow sales, especially for their smaller units. Further, the sales price per unit is lower than would be Eden's cost to newly construct the units, given the efficiencies of scale of KB Homes' operation and the large size of the overall development, which totals 383 units. Eden Housing can therefore take advantage of the relatively low cost per unit, offer large units to seniors at a range of incomes from 30% of Area Median Income (AMI) to 45% AMI, and offer the units starting in Fall 2008.

In addition to meeting the requirements of the City's Policy, this transaction also achieves other City objectives. It provides rental units to City of San José residents at substantially affordable rents, and it disperses affordable units among market rate units to promote economic integration at the project level.

Project Feasibility

Staff has determined the project to be financially feasible. While obtaining project-based Section 8 certificates will likely be difficult, the project could apply for AHP funding to help fill a resulting funding gap. The fact that KB Homes is selling the units to Eden Housing for less than the AHCL price is evidence that the City is subsidizing only the increased affordability, as the sale of units at \$319,000 meets the affordability obligation for low- and moderate-income families.

Eden has gotten initial positive indications from TCAC regarding a scattered site application, as well as from tax credit syndicators and direct investors potentially interested in this project. These initial indications of interest is important given that scattered site applications are unusual and the investor markets are more choosy and have less capital than in past years given current financial market conditions.

### Prevailing Wage Compliance

City Resolution No. 61716, as amended on February 1, 2005, requires that prevailing wages be paid on projects receiving City funding assistance. The Madison Place Apartments project will accordingly employ contractors that are paid prevailing wages for any work that is done after Eden Housing purchases these 30 units.

### Recommendation and Conditions

The Housing Department recommends that this Project be given a funding commitment by the City Council of up to \$3,000,000.

Closing of the City's loan and its final amount will be subject to the City's receipt and approval of a third-party appraisal that supports the purchase price of the proposed site and of the value of the building as completed. Loan closing and the final amount is also dependent upon the receipt of a market study which substantiates the demand for the project's affordable units as well as further substantiates the cost of the additional affordability to that required under KB Home's inclusionary requirements for the Monte Vista ownership project.

Specific business terms will be approved by the Director of Housing through the City's Delegation of Authority ordinance in Chapter 5.06 of the San José Municipal Code.

### **EVALUATION AND FOLLOW-UP**

The Housing Department posts bi-monthly reports on the status of its subsidized projects to its website, [www.sjhousing.org](http://www.sjhousing.org). If approved, the Madison Place Apartments project would be included in these reports. Housing Department and Agency staff will bring forward an amendment to the Inclusionary Housing Policy in the Fall of 2008 to address the conversion of for-sale affordability units to rental affordability units.

### **POLICY ALTERNATIVES**

To arrive at this proposal, Staff considered the following options:

**Alternative #1:** *Reject the proposed Amendment to the For-Sale Affordability Restriction for the larger KB Homes project to allow some units to be rented at restricted affordable rents.*

**Pros:** There are no advantages to opposing the Amendment, as it creates advantages for the City, for market-rate developers, and affordable housing developers.

6-9-08

Subject: Amended Affordability Agreement & Funding  
Commitment for the Madison Place Apartments Project

Page 7

**Cons:** Amending the For-Sale Affordability Restriction enables the City to spend less per deeply affordable unit than it otherwise would for new construction, as base affordability is funded by the market-rate developer, and delivers larger-than-usual units to low-income renters. In addition, the Amendment defines several conditions to approval of transactions that help protect the City's interests and achieve its policy objectives.

**Reason for not recommending:** The proposed Amendment will result in better outcomes for all parties involved; Staff therefore recommends its approval.

**Alternative #2:** *Deny the requested funding commitment.*

**Pros:** The funds being requested could be used for other affordable housing projects and programs.

**Cons:** The proposed funding commitment complies with the Department's funding priorities and has been judged financially feasible. There is continued strong demand for ELI and VLI senior housing close to transit and amenities. The per-unit cost for the deep level of affordability that Eden proposes is also lower than usual, as it is offset by the low sales price offered by KB Homes.

**Reason for not recommending:** The proposed project will help to meet the demand for housing that is affordable to ELI and VLI senior households and will help the City to fulfill its affordable housing goals.

### PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach.

MAYOR, CITY COUNCIL, AGENCY BOARD

6-9-08

**Subject: Amended Affordability Agreement & Funding  
Commitment for the Madison Place Apartments Project**

Page 8

This item meets Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. This Memorandum will be posted to the City's website for the June 24, 2008, Council Agenda.

### **COORDINATION**

This report has been coordinated among the Housing Department, the Office of Equality Assurance and the Office of the City Attorney.

### **FISCAL/POLICY ALIGNMENT**

This expenditure is consistent with the Housing Department's *Five-Year Investment Plan for Fiscal Years 2003/04-2008/09* in increasing the supply of affordable housing, and with the City's *Consolidated Plan, 2008-09* in providing households units for very low- and extremely low-income households.

### **COST SUMMARY/IMPLICATIONS**

#### **1. COST OF PROJECT:**

<b><u>USES</u></b>	<b><u>AMOUNT</u></b>
Hard Costs	\$37,500
Soft Costs	\$671,134
Acquisition Costs	\$9,015,000
<b>TOTAL</b>	<b>\$9,723,634</b>

#### **2. COST ELEMENTS OF CITY LOAN AMOUNT:**

<b><u>USES</u></b>	<b><u>AMOUNT</u></b>
Acquisition of completed units	\$3,000,000
<b>TOTAL</b>	<b>\$3,000,000</b>

**3. SOURCE OF FUNDING:** Fund 448—Multi-source Fund.

**4. FISCAL IMPACT:** No ongoing fiscal impact.

MAYOR, CITY COUNCIL, AGENCY BOARD

6-9-08

Subject: Amended Affordability Agreement & Funding  
Commitment for the Madison Place Apartments Project

Page 9

**BUDGET REFERENCE**

Fund #	Appn. #	Appn. Name	Total Appn.	Amt. For Contract	2007-2008 Adopted Operating Budget (Page)	Last Budget Action (Date, Ord. No.)
448	3580	In-Lieu Fee Projects	\$5,697,250	\$3,000,000	XI-64	2/12/08, 28241

**CEQA**

CEQA: Resolution No. 72625, PDC03-071.

  
\_\_\_\_\_  
DEBRA FIGONE  
City Manager

  
\_\_\_\_\_  
HARRY S. MAVROGENES  
Executive Director

For questions, please contact LESLYE KRUTKO, Director of Housing, at 408-535-3851.

Attachments



ATTACHMENT 1  
Subject Site Map  
Madison Place Apartments

