



Memorandum

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

FROM: Debra Figone
Harry S. Mavrogenes

SUBJECT: SEE BELOW

DATE: March 2, 2010

COUNCIL DISTRICT: 7
SNI: NA

**SUBJECT: ACTIONS RELATED TO THE SALE OF THE PROPERTY AT 2112
MONTEREY ROAD FROM EHC LIFEBUILDERS TO CHARITIES
HOUSING AS REQUIRED BY THE FORBEARANCE AGREEMENT
WITH EHC AND ITS CREDITORS**

RECOMMENDATION

- (a) It is recommended that the City Council adopt a resolution:
- (1) Approving the Replacement Housing Plan for the Markham Terrace Apartments, located at 2112 Monterey Road; and,
 - (2) Authorizing the transfer of the CDBG obligations set forth in the \$220,000 CDBG loan from the Markham Terrace Apartments to the Boccardo Regional Reception Center, located at 2011 Little Orchard Street.
 - (3) Authorizing the Director of Housing to: (i) accept an assignment from the Redevelopment Agency of the Public Use Rights contained in the Owner Participation Agreement (“OPA”) between the Redevelopment Agency and EHC Lifebuilders for 2112 Monterey Road, and (ii) negotiate and execute the documents required to transfer the Public Use Rights from 2112 Monterey Road to 2011 Little Orchard Street.
- (b) It is recommended that the Redevelopment Agency Board approve an assignment to the City of the Public Use Rights contained in the Owner Participation Agreement between the Redevelopment Agency and EHC Lifebuilders for 2112 Monterey Road.

OUTCOME

Approval will facilitate the demolition and replacement of the 95-unit Markham Terrace Apartments located at 2112 Monterey Road with a new affordable housing project to be developed by Charities Housing Development Corporation (“Charities Housing”).

BACKGROUND

The 2112 Monterey Road property consists of 2.86 acres improved with a 95-unit SRO (single room occupancy) apartment complex known as the Markham Terrace Apartments (Markham Terrace), originally constructed between 1950 - 1973 and operated by EHC Lifebuilders (EHC) throughout its history as an affordable housing project. The site also contains a 5,000 square foot single-story restaurant building (Monterey Breeze) with a 5,000 square foot basement office space built in 1970. The residential units are inadequate in terms of size and features and the building structure is in poor condition. A Physical Needs Assessment on the apartment complex determined that it was not economically feasible to rehabilitate the structure.

On November 21, 2008, Charities Housing entered into a Purchase Agreement with EHC for the Markham Terrace property in the amount of \$6,280,000. On January 27, 2009, the City Council approved a predevelopment loan of up to \$500,000 for Charities Housing for the redevelopment of the Markham Terrace site. The City Council also approved the *Relocation Impact and Last Resort Housing Plan for the Markham Terrace Project* (the Relocation Plan) and authorized funding to relocate the tenants at Markham Terrace.

Also on January 27, the City Council approved the framework for a Forbearance and Release Agreement (Agreement between EHC and its Creditors) to strengthen the financial position of EHC. EHC debts owed to Comerica, Bank of the West, and the Department of Veterans Affairs would be repaid from the sale of the property to Charities Housing. Both the City and the County's Office of Affordable Housing had tentatively agreed to allow Charities Housing to assume their \$3,600,000 and \$125,000 loans, respectively, against the property.

On April 4, 2009, the City executed the Forbearance and Release Agreement (Forbearance Agreement) dated January 27, 2009, with EHC, Comerica Bank and the County of Santa Clara, wherein the City agreed to recommend to City Council that the City Council approve providing funds for the sale of Markham Terrace in the amount of \$6,280,000. On August 4, the City Council adopted a resolution approving a land acquisition loan of up to \$6,280,000 for Charities Housing or its designated affiliate. On September 30, Charities Housing submitted a Notice of Funding Availability (NOFA) application for a construction/permanent loan in the amount of up to \$19,349,500 for the development of the project, including up to \$6,280,000 for land acquisition and \$500,000 for predevelopment and demolition.

On December 23, 2009, the City closed its \$6,780,000 loan (\$6,280,000 land acquisition and \$500,000 predevelopment and demolition) consistent with the terms of the April 4 Forbearance Agreement and August 4 City Council resolution. The existing property improvements are expected to be demolished. The project was taken out of service as of November 9, 2009, at such time as the tenant relocation was completed.

ANALYSIS

In addition to the requirement to approve a Relocation Plan to address the disposition of the tenants (as previously approved by City Council), State redevelopment law also requires that the City Council approve a Replacement Housing Plan to address the disposition of the affordable

housing units that will be demolished in the near future. Section 33413(a) of the California Health and Safety Code requires that "whenever low- or moderate-income household dwelling units are destroyed or removed from the housing market as part of a redevelopment project where financial assistance has been provided by the Agency (in this case the City), the Agency shall rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low- or moderate-income, an equal number of replacement dwelling units which have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the City."

At the Housing Department's request, a Replacement Housing Plan ("RHP") for the subject property has been prepared by Paragon Partners Ltd. Per state law, a draft of the RHP was made available for review and comment by the general public and other public agencies for a minimum of 30 days. The RHP was published on the Housing Department's Internet web site from October 2009 through January 26, 2010. No comments were received and it is now requested that City Council adopt the RHP as drafted.

Charities Housing is expected to develop a new affordable housing project. There is currently not a defined schedule for construction of the 2112 Monterey Road replacement housing. The schedule for creation of the replacement housing will depend on the financing sources available that can be secured when all of the required predevelopment work is completed.

City financing is expected to come from Redevelopment Agency tax-exempt set-aside funds. This project will be a funding priority for the City as redevelopment law requires that the replacement units be constructed within four years from the date they are taken out of service. Other sources of funds are currently unidentified, but may include the following: Tax-exempt first mortgage bond financing or conventional first mortgage financing, 9% and or 4% low income housing tax credits, State of California Multifamily Housing Program financing, Mental Health Services Act funds, or Federal Home Loan Bank Affordable Housing Program financing.

Charities Housing recently obtained a General Plan Amendment (GP08-07-04) and a Planned Development Zoning (PDC09-015) to allow removal of existing buildings on the site and construction of up to 102 affordable multi-family units. They intend to file a Planned Development Permit to remove the existing vacant structures with demolition expected to be accomplished by August 2010. Construction of the new development will proceed at such time as City funding becomes available and other financing is secured.

Transfer of Public Use Rights from Markham Terrace to the Boccardo Reception Center:

On February 29, 2000, EHC entered into an Owner Participation Agreement with the Redevelopment Agency, whereby the Agency acquired public use rights related to Markham Terrace for a term of 15 years for the sum of \$300,000. As part of this transaction, the Agency will assign its public use rights to the City. The Agency, City and EHC have agreed to transfer all right, title and interest arising from the OPA from Markham Terrace to the Boccardo

Reception Center. These rights will remain in place at the Boccardo Center for the remainder of the term originally prescribed in the OPA. The Director of Housing shall negotiate any documents required to transfer the Public Use Rights.

Transfer of CDBG Loan obligations from Markham Terrace to the Boccardo Reception Center:

In addition, the City and EHC have agreed to transfer a \$220,000 CDBG forgivable loan that was advanced to EHC in 1995 to provide community services in connection with the public use rights at Markham Terrace. EHC will assume the obligations of this forgivable grant, which will be secured by the Boccardo Reception Center property. The loan matures on December 31, 2012, at which time the loan will be forgiven.

Status Report on the Forbearance Agreement:

The Forbearance Agreement authorized by City Council on January 29, 2009, set forth the terms upon which EHC's debts to its creditors were to be resolved. In addition to selling the Markham Terrace property, the Agreement also required the sale of other properties owned by EHC. As of the December 23, 2009, closing of the City's \$6,780,000 acquisition and predevelopment loan with Charities Housing, all of EHC's properties identified in the Forbearance Agreement (including Markham Terrace) have been sold. Proceeds from these properties have been used to pay EHC's debts to Comerica Bank, Bank of the West, the City, and the other creditors identified in the Forbearance Agreement. In addition, proceeds of the sales were used to cover the cost the City paid to complete relocation of tenants formerly living at Markham Terrace.

As a result of these actions, EHC is now in a much better financial position and is able to focus on its core mission of providing services to homeless individuals.

EVALUATION AND FOLLOW-UP

Once funding for the new development has been solidified, the Housing Department will return to City Council with a funding recommendation for the construction and permanent financing of the project.

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, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

This item does not meet the criteria listed above as the funding commitment was previously approved by City Council. As mentioned, the Housing Department posted a copy of the Draft Replacement Housing Plan on its website.

COORDINATION

This report has been coordinated with the Office of the City Attorney.

FISCAL/POLICY ALIGNMENT

This recommendation is consistent with the Housing Department's *Five-Year Investment Plan for Fiscal Years 2007/08-2011/12* in increasing the supply of affordable housing and with the City's *Consolidated Plan* in providing family units for very low- and extremely low-income households.

COST SUMMARY/IMPLICATIONS

There are no cost implications. Funding was previously approved by City Council.

CEQA

Mitigated Negative Declaration File Nos. GP08-07-04 and PDC09-015.



DEBRA FIGONE
City Manager



HARRY S. MAVROGENES
Executive Director

For questions please contact LESLYE KRUTKO, DIRECTOR OF HOUSING,
at 408-535-3855



REPLACEMENT HOUSING PLAN

FOR THE

Markham Terrace Restructuring Project

PREPARED FOR

The City of San Jose Housing Department

Created By:

Paragon Partners Ltd.

**1111 Howe Ave #510
Sacramento, CA
Phone: (916) 565-1174**

August, 2009

TABLE OF CONTENTS

I. INTRODUCTION	1
II. DEFINITIONS	1
III. REPLACEMENT HOUSING REQUIREMENTS	2
IV. PROJECT DESCRIPTION	3
V. RESIDENTIAL UNITS TO BE REMOVED AND REPLACED	4
VI. GENERAL LOCATION OF HOUSING TO BE REHABILITATED, DEVELOPED OR CONSTRUCTED	5
VII. FINANCING OF REPLACEMENT HOUSING	5
VIII. TIMETABLE FOR DEVELOPMENT OF REPLACEMENT HOUSING	5
IX. COMPLIANCE WITH ARTICLE XXXIV OF THE CALIFORNIA CONSTITUTION	6
X. PROVISION FOR PUBLIC REVIEW AND COMMENT	6

I. INTRODUCTION

This Replacement Housing Plan (RHP) for the subject property located at 2112 Monterey Highway, San Jose, CA 95112, has been prepared pursuant to Section 33413 of the California Health and Safety Code for the City of San Jose Housing Department (the City). Section 33413.5 requires that, not less than 30 days prior to the execution of an agreement for acquisition of real property, or the execution of an agreement for the disposition and development of property, or the execution of an owner participation agreement, which agreement would lead to the destruction or removal of dwelling units from the low- and moderate-income housing market, the City shall adopt by resolution a replacement housing plan.

In addition, Section 33413.5 mandates that the RHP shall include the following components:

- The number of dwelling units, housing persons and families of very-low, low or moderate income to be removed and replaced by construction or rehabilitation;
- The general location of housing to be rehabilitated developed or constructed pursuant to Section 33413;
- An adequate means of financing such rehabilitation, development, or construction;
- The timetable for meeting the RHP's relocation, rehabilitation, and replacement housing objectives; and
- A finding that the replacement housing does not require the approval of the voters pursuant to Article XXXIV of the California Constitution, or that such approval has been obtained.

II. DEFINITIONS

Very-Low-Income Household

Persons and families whose gross incomes do not exceed 50 percent of the area median income adjusted for family size.

Low-Income Household

Persons and families whose gross incomes exceed 50 percent but do not exceed 80 percent of the area median income adjusted for family size.

Moderate-Income Household

Persons and families whose gross incomes exceed 80 percent but do not exceed 120 percent of the area median income adjusted for family size.

Replacement Housing Plan
City of San Jose Housing Department
Markham Terrace Restructuring Project

Affordable Renter-Occupied Housing Cost

Section 50053 of the California Health and Safety code states that for any rental housing development, "affordable rent," including a reasonable utility allowance, shall not exceed:

- (1) For very-low-income households, the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.
- (2) For lower-income households whose gross incomes exceed the maximum income for very-low-income households, the product of 30 percent times 60 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those lower-income households with gross incomes that exceed 60 percent of the area median income adjusted for family size, it shall be optional for any state or local funding City to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.
- (3) For moderate-income households, the product of 30 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for those moderate-income households whose gross incomes exceed 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding City to require that affordable rent be established at a level not to exceed 30 percent of gross income of the household.

Replacement Dwelling Unit

For this RHP, "Replacement Dwelling Unit" means a dwelling unit developed or constructed in the City of San Jose CA, pursuant to Section 33413 in replacement of a dwelling unit destroyed or removed from the low and moderate income housing market by the City. Additionally, said unit must be inspected to determine that is decent, safe, and sanitary, contains at least the same number of bedrooms and other living areas as the dwelling unit destroyed or removed, and is available at affordable housing cost to low- and moderate-income households.

III. REPLACEMENT HOUSING REQUIREMENTS

Section 33413(a) of the California Health and Safety Code requires that whenever low- or moderate-income household dwelling units are destroyed or removed from the housing market as part of a redevelopment project which is subject to a written agreement with a redevelopment Agency or where financial assistance has been provided by the Agency (in this case the City), the Agency shall, within four years of the destruction or removal, rehabilitate, develop, or construct, or cause to be rehabilitated, developed, or constructed, for rental or sale to persons and families of low- or moderate-income, an equal number of replacement dwelling units which have an equal or greater number of bedrooms as those destroyed or removed units at affordable housing costs within the territorial jurisdiction of the City.

When dwelling units are destroyed or removed on or after January 1, 2002, 100 percent of the replacement dwelling units shall be available at affordable housing cost to persons in the same or lower income category (low, very low, or moderate), as the persons displaced from those destroyed or removed units.

Section 33413(f) of the California Health and Safety Code modifies these requirements as follows:

Notwithstanding subdivision (a), the City may replace destroyed or removed dwelling units with a fewer number of replacement dwelling units if the replacement dwelling units meet both of the following criteria:

- (1) The total number of bedrooms in the replacement dwelling units equals or exceeds the number of bedrooms in the destroyed or removed units. Destroyed or removed units having one or no bedroom are deemed for this purpose to have one bedroom.
- (2) The replacement units are affordable to the same income level of households as the destroyed or removed units.

The acquisition of the Markham Terrace Restructuring Project site and redevelopment are funded by multiple funding sources, some which are already in place and others yet to be determined by the City of San Jose Housing. The current funding source includes revenues from The City of San Jose's twenty percent tax increment funding. Additional funding may include, but are not limited to, the following; Tax Exempt first mortgage bond financing or conventional first mortgage financing, 9% and or 4% low income housing tax credits, State of California multifamily housing program financing, and additional federal home loan affordable housing program financing.

IV. PROJECT DESCRIPTION

The City of San Jose Housing Department has determined that there are a total of ninety five (95) single resident occupancy units "SRO", and one (1) five thousand (5,000) square foot restaurant space that occupy the project site. Of the ninety five (95) SRO units currently ninety (90) are occupied by residents, the remaining five units (5) are currently vacant. All of the 95 SRO units and the commercial restaurant site will be demolished and will be replaced with residential housing units. The replacement housing structure will contain approximately one hundred and fifteen residential units (115) of multiple bedroom sizes. The exact composition of each housing unit is yet to be determined, however there is expected to be a preponderance of two and three bedroom replacement units.

The City of San Jose authorized EHC Lifebuilders to liquidate the property located in the Markham Terrace Restructuring Project Area, with the requirement that EHC provides relocation assistance to all eligible affected households and businesses, under California Relocation Law.

The Project's primary activities will include the following:

A. Relocation of Eligible and Affected Tenants.

All current tenants will be required to move permanently and will therefore be qualified to receive relocation assistance under California State Law.

B. Relocation of Last Resort Housing Residents

It has been determined that all tenants qualify as occupants of Last Resort Housing, and therefore are entitled to receive permanent relocation assistance from the replacement property under the regulations of the Last Resort Housing provision.

V. RESIDENTIAL UNITS TO BE REMOVED AND REPLACED

The Subject Property contains ninety five (95) single residential occupancy units "SRO", and one (1) commercial restaurant site. Of the ninety five (95) residential units, ninety (90) are currently occupied by residential tenants. The following table illustrates the units by the number of bedrooms contained therein, and the income-level of the current occupants.

	Studios/ One Bedroom	Two Bedroom	Three Bedroom	TOTAL HOUSEHOLD UNITS AFFECTED
Vacant Units	5	0	0	5
Very-Low Income	86	0	0	86
Low Income	0	0	0	0
Moderate Income	4	0	0	4
TOTAL	95	0	0	95

Of the ninety five (95) single residential occupancy units, five of the units are without tenants should be considered vacant until demolished. Of the remaining ninety (90) occupied residential units, eighty six (86) are considered very-low income households qualifying to return through re-tenancy. The remaining four (4) residential units are listed as moderate income households and may qualify for relocation assistance from the project site under last resort housing.

VI. GENERAL LOCATION OF HOUSING TO BE REHABILITATED, DEVELOPED OR CONSTRUCTED

Pursuant to California Health and Safety Code Section 33413, the City will, within four years, rehabilitate, develop or construct, or cause to be rehabilitated, developed or constructed, for rental or sale to persons and families of low and very-low-income an equal number of dwelling units which have an equal number of bedrooms as those removed dwelling units, or a fewer number of replacement dwelling units if the replacement dwelling units collectively contain an equal or greater number of bedrooms than the combined bedrooms destroyed or removed and are available at affordable housing cost to households of the same income category as the displaced households.

Markham Terrace (the subject property) is a multi-story building with ninety five (95) SRO, residential housing units. The subject property is intended for sale and will be redeveloped by a future owner.

The City has identified replacement dwellings for all affected residents by way of survey conducted between the months of September and October of 2008. The replacement housing survey concluded that there is sufficient supplies of replacement residential dwellings available to accommodate the 90 occupied households are being displaced from the project site. Last Resort Housing Payments and relocation assistance will be available for those remaining tenants that will no longer meet the income requirements of the newly constructed Markham Terrace Restructuring Project.

VII. FINANCING OF REPLACEMENT HOUSING

The creation of the replacement housing will depend on a number of financing sources available at the time of construction. Markham Terrace Restructuring Project replacement housing will be financed with redevelopment agency tax exempt set-aside funds. The City transfers all of the 20% set-aside funds into the City's Housing Development Fund. This money is used by the City to assist in the production of affordable housing as required by Law. In addition to the 20% tax increment funding, the City will obtain funds to complete the Markham Terrace Project. To date, these funds are currently unidentified, but may include, but are not limited to, the following; tax exempt first mortgage bond financing or conventional first mortgage financing, 9% and or 4% low income housing tax credits, State of California Multifamily Housing Program financing, Mental Health Services Act funds and Federal Home Loan Bank Affordable Housing Program financing.

VIII. TIMETABLE FOR DEVELOPMENT OF REPLACEMENT HOUSING

Within four years of the demolition of the subject property, which residential improvements are considered low and/or moderate income housing, the City will rehabilitate, develop or construct, or cause to be rehabilitated, developed or constructed for rental to low or moderate income families replacement dwellings for those units lost as a result of the Project's implementation. Currently, there is no defined completion date for construction of the Markham Terrace

Replacement Housing Plan
City of San Jose Housing Department
Markham Terrace Restructuring Project

replacement housing, but in no event will replacement housing be available later than four years after the destruction or removal of the existing subject improvements.

IX. COMPLIANCE WITH ARTICLE XXXIV OF THE CALIFORNIA CONSTITUTION

Article XXXIV of the California Constitution requires voter approval of all low-rent housing projects that are developed, constructed, or acquired by a public entity. In order to assist with additional low rent housing in the City, in 1988 and in 1994 the City placed on the ballot two Article 34 measures, which were approved by the City electorate. In 1988, Measure D, authorized the acquisition, and if necessary rehabilitation, of existing low rent privately-owned housing units assisted by the U.S. Department of Housing and Urban Development, not to exceed three hundred (300) housing units per calendar year. In 1994, Measure C, authorized the development, acquisition or construction of low rent housing units for low income families or blind, elderly, or disabled persons of low income not to exceed 1/2 of 1% the existing housing units in San Jose as of the 1990 Census for each calendar year. The number of units authorized on an annual basis under Measure C is 1297 plus any unused amount from a previous year.

The City electorate approved Article 34 measures discussed above are evidence of compliance with the Article XXXIV voter approval requirements. Therefore, the proposed replacement housing does not require the approval of voters pursuant to Article XXXIV of the California Constitution.

X. PROVISION FOR PUBLIC REVIEW AND COMMENT

In accordance with Section 33413.5, a draft of the RHP will be made available for review and comment by the general public and other public agencies. The RHP will also be published in a local news agency paper for a minimum 30-day period.