



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Approve Loan and Regulatory Agreements with MP Edwina Benner Associates, LP for a Loan of \$7.43 Million in Housing Mitigation Funds and a Loan of \$600,000 in HOME Funds for Edwina Benner Plaza Affordable Housing Development at 460 Persian Drive and Approve Budget Modification No. 31

BACKGROUND

The Benner Plaza project was initiated in early 2015. The project consists of a new 66-unit affordable rental housing development at 460 Persian Drive in Sunnyvale. MidPen Housing Corp., a non-profit affordable housing developer, initially requested City assistance for this project in response to a Request for Proposals (RFP) for Housing Mitigation Funds (HMF) issued by the Housing Division in early 2015. MP Edwina Benner Associations, LP (the "Borrower") is an affiliate of MidPen and the owner of the project. MP 460 Persian LLC, a wholly controlled affiliate of MidPen Housing, is the non-profit managing general partner of the limited partnership. The project, named Edwina Benner Plaza in honor of Sunnyvale's first female mayor, will cost nearly \$44,300,000 to develop, including approximately \$7 million land cost.

Prior City Actions

On March 17, 2015, Council approved a conditional award of \$5 million to MidPen to provide partial funding for the cost of acquiring the project site, located at 460 Persian Drive (RTC No. 15-0091).

On January 25, 2016, the Planning Commission approved a special development permit and adopted a mitigated negative declaration for the project (see Report to Planning Commission No. 15-0987 for detailed project description), which was the final approval of the planning permit and environmental review documents for the project.

On February 23, 2016 (RTC No. 15-0091), Council approved the terms for a \$5 million bridge loan to the Borrower, to be converted to a 55-year permanent loan at the time of closing on the construction loan. This action provided the final loan commitment and approved the loan terms for the same \$5 million conditional award to the project; shortly after, the bridge loan was closed, City security instruments were recorded against the property, and funds were disbursed to the Borrower for the land acquisition costs.

On May 3, 2016 (RTC No.16-0041), as part of the 2016 HUD Action Plan, Council allocated federal HOME and CDBG funds to MidPen related to Benner Plaza: a loan of \$600,000 in HOME funds for development of the housing project, and a grant of \$200,000 in CDBG funds for the Persian Drive sidewalk extension on City property, planned to provide bicycle and pedestrian linkages from the neighborhood to the bike/ped bridge into Moffett Park at Borregas Avenue.

In November 2016, MidPen secured the final funding commitment, an award of federal low-income housing tax credits (LIHTC), needed to fully fund the Benner Plaza project. MidPen recently applied for building permits and plans to close on the outstanding construction and subordinate loans, convert the City loan to permanent, and begin construction in mid-April 2017. MidPen did not receive the State “Cap-n-Trade” (AHSC) funds it had applied for jointly with the City, however, since it received the LIHTC award, those funds are no longer needed, except for the sidewalk extension project which still has a funding gap (as that was not eligible for LIHTC funds). The remaining outstanding conditions required to convert the bridge loan to permanent have been met or will be met prior to permanent loan closing. Other matching funds have been committed to the project by the County Office of Supportive Housing (OSH), the Silicon Valley Housing Trust, a limited partner tax credit investor (Bank of America), and operating subsidies have been committed by the Housing Authority of the County of Santa Clara (HACSC).

EXISTING POLICY

General Plan, Housing Element, Goal A

Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale’s households of all income levels.

Policy A.2: Facilitate the development of affordable housing through regulatory incentives and concessions, and/or financial assistance.

2015-2020 Sunnyvale Consolidated Plan

Goal A.1.a: Provide financial and/or technical assistance to qualified affordable housing developers for rehabilitation, construction and/or preservation of affordable rental housing and/or site acquisition.

ENVIRONMENTAL REVIEW

Staff prepared an initial study of the proposed housing project pursuant to the California Environmental Quality Act (“CEQA”), and a Mitigated Negative Declaration pursuant to Public Resources Code Section 21080(c) was adopted by the Planning Commission on January 25, 2016.

DISCUSSION

Two sets of agreements are attached for Council’s review and approval. One set is for the HMF permanent loan (Attachments 1 and 2) and the other is for the HOME loan (Attachments 3 and 4). Each set includes a loan agreement and a regulatory agreement. Each loan will also have a promissory note and deed of trust in final form as approved by the City Attorney.

HMF Agreements

The proposed HMF Loan Agreement sets forth the terms of the City loan, including financing terms, disbursement requirements, and general requirements for the project. Although the existing funding commitment for the project was \$5 million, staff has drafted the agreement with a higher amount of \$7.43 million. The approval of a budget modification in the amount of \$2.43 million in additional funding is recommended to allow a greater number of units in the project to be open to Sunnyvale applicants (those who live or work in Sunnyvale). With the current funding commitments, only 32 of the units will be open to such applicants via lottery. The remaining units will be reserved for households referred directly by other funding agencies (OSH and HACSC) as explained below. With the additional \$2.43 million, an additional ten units will be open to Sunnyvale applicants, for a total of 42 units out of 66 in the project.

The proposed loan terms include three percent simple annual interest, fully deferred, with residual

receipt payments as defined in the note, due annually from any available “surplus” cash flow, and an affordability term of 55 years. The term of affordability runs with the land for the term, and does not terminate early if the loan is paid off early. The proposed Regulatory Agreement (**Attachment 2**) will restrict the units into three categories of affordability (extremely low, very low, and low), as shown in Exhibit D and defined within the Agreement. These restrictions are consistent with the tax credit restrictions which will be imposed by the State and those of other funders.

If Council approves the HMF Loan and Regulatory Agreements with MP Edwina Benner Associates, LP that are consistent with the conditional award loan amount of \$5 million (Alternative 2), then a budget modification will not be necessary.

HOME Agreements

The HOME loan agreement provides a loan of \$600,000 in federal HOME funds currently available to the City, and is similar in form to the HMF loan agreement, except with additional language regarding the federal HOME program and certain HOME-required clauses. The terms of the HOME loan are also very similar to those of the HMF loan except that the HOME loan is junior to the HMF loan, and includes some federal requirements. The proposed Regulatory Agreement (**Attachment 4**) will restrict three of the units as HOME units subject to ongoing federal requirements. The HOME units will be restricted at the very low income level. These restrictions overlay those of the other covenants on the property.

Other Funding Commitments

The project has been awarded an LIHTC reservation, a loan of \$2.350 million from OSH, funding from the Housing Trust, and an award of Section 8 project-based vouchers (PBV) from the HACSC for twenty-three of the units in the project. The funding sources and amounts are shown in Exhibit B to each of the Loan Agreements (Attachments 1 and 3).

Occupancy Restrictions

As negotiated between the various funding agencies, ten of the 23 PBV units will be reserved for very low income households on the Housing Authority’s existing Section 8 waiting list who are at risk of homelessness. The remaining thirteen PBV units will be reserved for clients referred directly by OSH who are homeless with disabilities. The County has committed to pay for supportive services for the homeless tenants at an estimated cost of \$10,000 per unit per year. The remaining 42 units in the project will be available to general applicants, including Sunnyvale (live or work) applicants as well as the general public. A preference for Sunnyvale applicants will be applied to the 42 open units but not to the 23 PBV units. This is consistent with past practice on similar projects.

Status of the Persian Drive Sidewalk Extension Project

As noted above, there remains a funding gap for the sidewalk extension project, which was estimated by DPW to cost approximately \$1,000,000, including certain green features proposed by ESD. Because the sidewalk extension would complete a critical neighborhood linkage for pedestrians and bikers in this neighborhood, staff plans to recommend an additional \$472,000 in CDBG funds for the sidewalk extension in the 2017 Action Plan and projects budget, subject to availability of federal CDBG funds for FY 2017-18. ESD estimates approximately \$80,000 in grant funds may be available to retain the green features planned for this project. If all of these sources come through, approximately \$750,000 could be available for this project. Staff feels that the project could be modified to fit within this budget. This funding will be recommended as part of the forthcoming 2017 Action Plan and Projects Budget. If that funding is approved, DPW has requested and MidPen has

agreed to design and construct the project for the City concurrently with the Benner Plaza construction.

FISCAL IMPACT

The recommended action will not impact the City's General Fund. A \$5 million HMF allocation for this project was included in the FY 2015/16 Projects Budget and remains available for the project. The additional \$2.43 million would need to be allocated through the Budget Modification process. The HMF exists for the purpose of funding affordable housing projects such as Benner Plaza; staff finds that the recommended action is consistent with its purpose and various city policies regarding affordable housing.

Budget Modification No. 31 has been prepared to appropriate additional funding to 460 Persian Dr.: Loan for New Affordable Apartments by MidPen project.

**Budget Modification No. 31
FY 2016/17**

	Current	Increase/ (Decrease)	Revised
Housing Fund			
<u>Reserves</u>			
Below Market Rate In Lieu Reserve	\$3,731,821	(\$2,430,000)	\$1,300,821
<u>Expenditures</u>			
Project 831750 - 460 Persian Dr.: Loan for New Affordable Apartments by MidPen	\$5,000,000	\$2,430,000	\$7,243,000

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Approve Budget Modification No. 31 in the amount of \$2,430,000 and the HMF Loan and Regulatory Agreements with MP Edwina Benner Associates, LP, with a loan amount of \$7.43 million, in substantially the form provided in Attachments 1 and 2 to the report, and authorize the City Manager to execute the Agreements in final form as approved by the City Attorney.
2. Approve the HMF Loan and Regulatory Agreements with MP Edwina Benner Associates, LP in substantially the form provided in Attachments 1 and 2 to the report, that are consistent with the conditional award loan amount of \$5 million, and authorize the City Manager to execute the Agreements in final form as approved by the City Attorney.
3. Approve the HOME Loan and Regulatory Agreements with MP Edwina Benner Associates, LP in substantially the form provided in Attachments 3 and 4 to the report, with a loan amount of \$600,000, and authorize the City Manager to execute the Agreements in final form as

approved by the City Attorney.

RECOMMENDATION

Alternatives 1 and 3: 1) Approve Budget Modification No. 31 in the amount of \$2,430,000 and the HMF Loan and Regulatory Agreements with MP Edwina Benner Associates, LP, with a loan amount of \$7.43 million, in substantially the form provided in Attachments 1 and 2 to the report, and authorize the City Manager to execute the Agreements in final form as approved by the City Attorney; and 3) Approve the HOME Loan and Regulatory Agreements with MP Edwina Benner Associates, LP in substantially the form provided in Attachments 3 and 4 to the report, with a loan amount of \$600,000, and authorize the City Manager to execute the Agreements in final form as approved by the City Attorney.

While the project could begin construction as planned with the existing \$5 million HMF loan commitment provided by the City, staff recommends increasing the HMF loan amount by \$2.43 million in order to increase the number of units available to current Sunnyvale applicants (those living and working in the City) by 10 units from 32 to 42 units of 66 units available. The remainder of the units would be reserved for those referred directly from county-wide lists controlled by OSH and HACSC, which contain a very small percentage of Sunnyvale households, according to the most recent data available. These reservations apply not only to initial leasing of the units, but to vacancies that occur throughout the 55-year term of affordability, or for at least as long as the PBVs are made available by the HACSC (typically 30 years with option to renew).

The Benner Plaza project addresses the goals of the RFP, the City's General Plan and Housing Element, and related local and regional land use and housing policies and anti-displacement efforts. The recommended actions will help create affordable rental housing for lower-income households for at least 55 years. MidPen will provide 65 new affordable housing units to the City's affordable housing stock in an area that is adjacent to its largest employment center. With this action, the project will be able to begin construction in April 2017 and is planned for completion in late 2018.

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Reviewed by: Trudi Ryan, Director, Community Development
Reviewed by: Kent Steffens, Assistant City Manager
Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. HMF Loan Agreement
2. HMF Regulatory Agreement
3. HOME Loan Agreement
4. HOME Regulatory Agreement