



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Hold Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing and Adopt Resolution Approving Issuance of up to \$50 Million in Tax-Exempt Bonds for Mixed-Income Rental Housing Development at 1008 E. El Camino Real in Sunnyvale and Authorizing the City to Become an Additional Member of the California Public Finance Authority

BACKGROUND

On July 25, 2017, (RTC No. 17-0689) the City Council approved development of a new 108-unit mixed-income apartment project by St. Anton Communities (Developer) submitted through Planning File 2016-7293. The project will be built on a 2-acre site on El Camino Real and Poplar Avenues, and is known as the "St. Anton ECR Apartments" project (the "Project"). Approval of the Project was contingent on the Developer's voluntary commitment to provide 20% of the new apartment units (22 units) at rents affordable to very low income households (VLI units), supported by federal tax credits. Very low income households are those with incomes at or below 50% of the area median income (AMI).

The project site consists of two parcels: one at 1008 E. El Camino Real (APN 313-03-011) and the other at 1316 Poplar Avenue (APN 313-03-013). The property on El Camino was previously a 44-space mobile home park, and a duplex was located on the Poplar property. The mobile home park owner applied for approval of a Conversion Impact Report (CIR) to close the park in early 2015. The City Council approved the CIR on January 5, 2016 (RTC No. 15-0890), with a tenant relocation assistance plan consistent with Sunnyvale Municipal Code (SMC) Chapter 19.72. The tenants were relocated to other housing by August 2017 with relocation assistance provided by the park owner, Sunnyvale Park LLC, and the park was closed shortly thereafter.

The Developer intends to use tax-exempt bonds and federal "4%" tax credits to finance development of the Project. The bonds and tax credits are regulated by the federal Internal Revenue Code (IRC), which requires the City Council to conduct a public TEFRA hearing and adopt a resolution approving the issuance of tax-exempt revenue bonds for the Project. Additionally, the resolution authorizes the City to become an additional member of the California Public Finance Authority pursuant to the Joint Exercise of Powers Agreement. A draft resolution consistent with this requirement is provided in Attachment 3. The bonds and tax credit financing will make it more financially feasible for the Developer to provide 22 affordable, very low-income units within the Project.

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.1 Encourage diversity in the type, size, price and tenure of residential development in Sunnyvale, including single-family homes, townhomes, apartments, mixed-use housing, transit-oriented development, and live-work housing.

Policy A.7 Support collaborative partnerships with non-profit organizations, affordable housing builders, and for-profit developers to gain greater access to various sources of affordable housing funds.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a “project” with the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

DISCUSSION

The Project consists of a 108-unit apartment building along El Camino Real consisting of four stories of residential units located above the ground floor amenities and parking, plus one level of underground parking, and a smaller, three-story residential (and parking) building facing Poplar Ave. The Project will include a mix of studios, one-bedroom, and two-bedroom units, 22 of which will be affordable to very low-income tenants. The Developer did not apply for any City funding to assist the affordable units in the Project; however, it has requested the City’s in-kind assistance in conducting the required TEFRA hearing and adopting the attached resolution to allow the Project to secure the bonds and tax credits for construction of the Project. This in-kind assistance is consistent with policies in the City’s Housing Element to assist developers to gain greater access to various sources of affordable housing funds.

An organizational chart depicting the various entities involved in this Project is provided in Attachment 1. The Developer will form a limited partnership (St. Anton ECR, L.P.) between a tax credit investor and an affiliate of the Developer (St. Anton ECR, L.L.C.) The limited partnership will seek an allocation of up to \$50 million in tax-exempt bonds for the Project from the State of California Tax Credit Allocation Committee (TCAC). The limited partnership will build and own the Project and serve as the borrower for the bonds. The Developer has selected the California Public Finance Authority (CalPFA), a joint powers authority (JPA) and public entity of the State of California, as the bond issuer.

As noted above, for the bonds to qualify for federal and state tax exemptions, the federal Tax and Equity Fiscal Responsibility Act (TEFRA) requires the governing body of the jurisdiction where the project is located (e.g., Sunnyvale City Council) to hold a public hearing on the proposed bond issuance for the Project to allow public comment and discussion of the matter. To complete the allocation request, the City Council must also adopt a resolution authorizing the proposed issuance of revenue bonds for the project by the California Public Finance Authority (“CalPFA”) and authorizes the City to become an Additional Member of the CalPFA. The proceeds of the bonds will be used to make a loan to the Borrower to finance the development costs of the Project.

City Conditions of Approval

The City’s conditions of approval of the Project require the Developer to enter into an affordable housing agreement with the City to regulate the 22 affordable units for a 55-year term, consistent with

the term and affordability level (very low income) required by TCAC. The City agreement, which must be recorded before building permits may be issued for the Project, will be structured to avoid any conflicts with TCAC and IRC regulations. The Developer has confirmed that the City agreement may include the City's usual local preference for income-eligible households that live or work in Sunnyvale, without conflicting with TCAC and IRC regulations. The former tenants of the mobile home park previously located on the Project site were provided with written notice of the requirements in Sunnyvale Municipal Code (SMC) Chapter 19.72, which provides former tenants with a first right of refusal to any new housing units to be built on the site (market-rate or affordable). That first right of refusal may be exercised as long as they are eligible for the units, based on the Project's standard tenancy requirements for the market-rate units, or the TCAC and IRC requirements for the affordable units.

SMC Chapter 19.72 also provides the former park tenants with priority for any City Below Market Rate ("BMR") units that may subsequently be developed on the former park site, provided they meet all eligibility requirements for such units. The 22 affordable units in this Project are not technically City BMR units, which includes only those in projects subject to the City's inclusionary requirements and/or State density bonus program. The units in this Project will be regulated by the federal tax credit program, which is not subject to the City's BMR guidelines and policies. However, staff will make every effort to notify and encourage the former park residents (those who provided their contact information for this purpose) to apply for the affordable units in the Project when they become available. These residents will also remain eligible for the local preference for the affordable units. The Project will increase local housing options for very low-income households, as well as for higher-income households that rent the market-rate apartments.

California Public Finance Authority

The CalPFA is a political subdivision of the State of California established under the Joint Exercise of Powers Act for the purpose of issuing tax-exempt and taxable conduit bonds for public and private entities throughout California. CalPFA promotes economic, cultural, and community development opportunities that create temporary and permanent jobs, affordable housing, community infrastructure and improve the overall quality of life in local communities.

For the CalPFA to issue the multi-family residential housing revenue bonds for the Project, the City must join the CalPFA as an Additional Member under Section 12 of the CalPFA Joint Exercise of Powers Agreement ("JPA Agreement") provided in Attachment 2. The Resolution provided in Attachment 3 authorizes the City to become an additional member of the CalPFA and approves the issuance of the Bonds for the Project. The CalPFA may not issue bonds for a project without first conducting a TEFRA hearing and obtaining approval from the governing body of the jurisdiction where the project is located. In this case that is the Sunnyvale City Council.

The JPA Agreement

The Agreement provides that CalPFA is a public entity, separate and apart from each member executing such agreement. The debts, liabilities and obligations of CalPFA do not constitute debts, liabilities or obligations of the members executing such agreement, including the City, if it joins the Authority. The Bonds to be issued by CalPFA for the Project will be the sole responsibility of the Borrower (St. Anton ECR L.P.). The City will have no financial, legal, moral obligation, liability or responsibility for the Project or the repayment of the Bonds for the financing of the Project. All financing documents with respect to the issuance of the Bonds will contain clear disclaimers that the Bonds are not obligations of the City or the State of California, but are to be paid for solely from funds

provided by the Borrower.

There are no costs associated with membership in CalPFA and the City will in no way become exposed to any financial liability by reason of its membership in CalPFA. In addition, participation by the City in CalPFA will not impact the City's appropriations limits and will not constitute any type of indebtedness by the City. Outside of holding the TEFRA hearing, adopting the required Resolution and executing the Agreement, no other participation or activity of the City or the City Council with respect to the issuance of the Bonds will be required. The Agreement expressly provides that any member may withdraw from such agreement upon written notice to CalPFA. In the case of the proposed bond financing for the Borrower, the City, following its execution of the JPA Agreement and issuance of the Bonds, could withdraw from the Authority.

FISCAL IMPACT

The recommended action will not impact the City's General Fund or any other City funds. The debt to be issued by CalPFA will be the sole responsibility of the Borrower, and the City will have no financial or legal obligations or responsibilities with respect to the Bonds. All financing documents will carry disclaimers that the loan is not an obligation of the City. The City will also bear no costs in the issuance of the proposed debt. CalPFA debts, liabilities and obligations do not constitute debts, liabilities or obligations of any party to the Agreement. Once becoming a member of CalPFA, CalPFA will provide the City with an annual payment of 10% of the Authority's collected administrative fees related to the Project, estimated to be approximately \$2,500 annually for the next ten years.

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. The TEFRA-required public notice was published in the Sunnyvale *Sun* newspaper on January 5, 2018.

ALTERNATIVES

1. Conduct a public hearing pursuant to the Tax and Equity Fiscal Responsibility Act and the Internal Revenue Code of 1986, as amended.
2. Adopt a Resolution (Attachment 3) approving the issuance of up to \$50,000,000 in tax-exempt revenue bonds by the California Public Finance Authority for the St. Anton ECR Housing Project and authorizing the City to become an additional member of the CalPFA (Attachment 2) on the City's behalf.

STAFF RECOMMENDATION

Alternative: Alternatives 1 and 2: 1) Conduct a public hearing pursuant to the Tax and Equity Fiscal Responsibility Act and the Internal Revenue Code of 1986, as amended; and 2) Adopt a Resolution (Attachment 3 to the report) approving the issuance of up to \$50,000,000 in tax-exempt revenue bonds by the California Public Finance Authority for the St. Anton ECR Housing Project and authorizing the City to become an additional member of the CalPFA (Attachment 2 to the report) on the City's behalf.

The adoption of the Resolution for the Project is required by TEFRA and the Internal Revenue Code. The Resolution authorizes the City to become an additional member of the CalPFA. The issuance of the Bonds will substantially enhance the viability of the Project that will improve and preserve the

affordable housing at St. Anton ECR. The recommended actions address several goals and objectives in the City's Housing Element. The Project will help meet the current regional shortage of workforce housing at all levels of affordability by adding 22 very low-income and 86 market-rate rental units to the City's housing stock. In addition, no City subsidy is needed to create the 22 affordable units.

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ATTACHMENTS

1. Organizational Chart
2. JPA Agreement
3. Draft Resolution