

# City Council Questions

## September 17, 2019 Council Meeting

### ITEM 4.4 RESOLUTION TO JOIN CALIFORNIA COMMUNITY HOUSING AGENCY

1. This sounds “too good to be true.” Can staff more clearly break down “pros” and “cons” with joining CalCHA?

**CalCHA’s financing model is based on: 1) low cost financing through tax-exempt bonds, 2) property tax exemptions, and 3) AMI levels based on the California Tax Credit Allocation Committee “TCAC” (instead of HCD) income limits. These are three significant factors that, when combined, can help moderate-income residential projects pencil. However, feasibility also depends on the specifics of any particular project that CalCHA seeks to finance. For example, Catalyst is CalCHA’s partner in identifying potential existing residential properties to acquire, rehab as needed, and deed-restrict. A potential property would need to have the right project economics and unit mix, in addition to CalCHA’s financing mechanism, to be financially feasible and to achieving CalCHA’s tenant preservation and moderate-income goals.**

**The “pros” to the City for joining CalCHA are: 1) enabling a funding mechanism to achieve “missing middle” housing; 2) no cost to the City; 3) any surplus project revenues to go to the City; 4) City has option to purchase the CalCHA-funded property (there would be no cost to the City if the bonds have been fully repaid and the City exercises its purchase option within the fourteen-year option window); and 5) even if the City does not exercise its purchase option, any eventual sale of a property would still accrue to the City. A potential “con” is that there would be a decrease in property taxes in the shorter term.**

2. The staff report indicates that this is helpful to finance the production and preservation of housing for those earning “up to 120% AMI.” Is there a floor, or could this also be used for financing for housing affordable to households at lower income levels?

**CalCHA activities include the ability to facilitate low- and moderate-income housing. However, one of the agency’s primary goals is to create moderate income housing by issuing bonds to fund that income category, given the current lack of such funding sources (for example, moderate income housing does not qualify for tax credits).**

3. Can this financing source be used with other sources, like tax credits, Measure A, etc.? Or is it purely for projects that could NOT be financed using those sources of funding?

**It is possible to combine this funding source with other sources. However, CalCHA seeks to create moderate-income housing and therefore would likely not seek tax credits or Measure A.**

4. Is it true that CALCHA is an extension of Kings County and would take ownership of properties concerned, making them tax-exempt and reducing funding for the City and schools?

**CalCHA owns the financed properties. After the 15th year, the City has a 14-year option period to purchase the property. The purchase price is equal to the outstanding balance on the bonds**

at that time. If the bonds have been paid in full, the City would have several options, one of which is to exercise its purchase option at no cost (because the debt has been entirely repaid).

The properties would be exempt from property taxes, as that is a key mechanism to facilitating the financial feasibility of moderate-income units. The tradeoff for CalCHA properties, as with all deed-restricted affordable housing, is affordable housing for certain incomes. Longer term, any surplus revenues from a project would go to the City. The City could also exercise its purchase option and own the property, sell the property, extend the deed restriction.

5. According to a Menlo Park report (<https://www.menlopark.org/DocumentCenter/View/22113/Staff-Report-19-005-HC---PACKET---CalCHA-Resolution>) CALCHA as a government entity would be exempt from many City ordinances or regulations. Would our relocation, rent control or BMR policies apply?

**Based on an initial review, staff believes the City's Tenant Relocation Assistance Ordinance and the Community Stabilization and Fair Rent Act would apply to CalCHA. Further review may be needed to confirm if it qualifies for any exemptions. Regarding TRAO, CalCHA policy is to maintain all existing tenancies with no displacement.**

**The City's BMR policy would not apply because the CalCHA properties would be 100% deed-restricted units, whereas the BMR program is for market-rate developments to include a 15% affordability requirement.**

6. Could the City easily get out of the JPA? (CALCHA doesn't have much of a track record. See Sonoma County proposal, <https://sonomacounty.ca.gov/WorkArea/DownloadAsset.aspx?id=2147575847>.)

**Yes, the City may withdraw from the JPA by written notice to the Board of the JPA.**

7. Will the City have a say in which properties the JPA purchases?

**Yes. Any CalCHA activities can only move forward if the City Manager or designee signs the purchase option agreement related to any potential JPA purchase. Without this approval, an acquisition may not move forward.**

#### **ITEM 7.1 GATEKEEPER APPLICATION FOR 365 TO 405 SAN ANTONIO ROAD AND 2585 TO 2595 CALIFORNIA STREET**

1. What is staff's rationale for recommending the allocation of staff resources to this project?

**In January 2018, staff recommended authorization of the original Merlone Geier TDR Gatekeeper request, in concept, if the two additional parcels at the corner were assembled. Now that the additional parcels have been acquired, staff continues to recommend the Gatekeeper be authorized, given the City's commitment to work collaboratively with LASD to implement the TDR Program and process Gatekeeper applications in a timely manner, as documented in the MOU between the City and LASD for the TDR Program.**

**Although the project has only received cursory review, the project does appear to support several policy objectives of the Precise Plan. It would help effectuate the TDR Program, supporting development of a school site in the San Antonio Area consistent with policy objectives in the SAPP. While the SAPP envisioned additional office development in another**

location, the project would still generally be consistent with the overall office development cap. Also, the project would place new office area close to Caltrain, while providing ground-floor retail activation at a highly visible corner.

2. How many stories are the office buildings in which WeWork/Facebook are located?

**The Phase 2 office buildings, leased by WeWork/Facebook, are six stories tall.**

3. How many stories in the Hyatt Centric Hotel?

**The Hyatt Centric Hotel is six stories tall.**

4. What is the FAR of Phase 1? What is the FAR of Phase 2? What is the FAR of Phases 1 and 2 together?

**The following data is based on the entitlement drawings for the Phase 2 project, and may differ slightly from the built condition.**

**The Phase 1 & 2 developments have a cumulative ~1.85 FAR. The two phases include approximately 1,725,000 square feet of mixed-use development on an approximately 934,000 square foot (21.5-acre) cumulative site area. The Phase 1 development has a ~1.27 FAR, with roughly 645,000 square feet of development on approximately 11.5 acres. The Phase 2 portion of the development has a ~2.53 FAR, with roughly 1,080,000 square feet of development on nearly 10 acres.**

**As a point of reference, as currently proposed, this Gatekeeper application would add approximately 230,000 square feet of development and one acre to the above totals, for a cumulative ~2.0 FAR and roughly 1,960,000 square feet.**

5. When staff says developers need to meet the Precise Plan even if TDRs are used, what specifically does that mean?

**Staff is unsure where this statement originates. However, use of TDR square footage does not provide an automatic exemption from all Precise Plan requirements; the existing zoning/Precise Plan still applies to the TDR projects.**

**However, a TDR project will generally require some deviations from existing Precise Plan requirements, due to the additional square footage being added to a project above what current regulations allow; at minimum, the TDR projects generally need additional height and FAR. Staff has been working with TDR project applicants through the development review process to identify and minimize deviations from existing regulations in order to maximize achievement of Precise Plan regulations and the intent of the Precise Plan(s). These deviations have been highlighted in project study sessions with the EPC, for projects that have reached that stage of review. While the TDR Program commits the City to good faith review of projects using TDR square footage, it is ultimately within Council's discretion to determine if the resulting projects and any design tradeoffs are acceptable**

6. Does staff have any insight into why leasing activity at the San Antonio Center has been slow since project completion?

**The applicant has indicated that the two big factors have been general market conditions (particularly a challenging retail environment) and the ongoing construction of the Hyatt hotel, which lagged substantially behind the rest of Phase 2 but is now complete.**

7. What would the 10,000 square feet of building services area at the project site consist of?

**Building service areas identified by the applicant include storage, loading dock/solid waste collection areas, utility rooms (e.g. transformers, generators, etc.), elevator banks and similar areas serving primary building uses.**

8. Can you give me more detail on why staff believes the approximately 39,000 square feet of unutilized commercial FAR/floor area from the earlier Phase I and II developments is not consistent with the original intent of the flexibility provision?

**The SAPP area is highly parcelized, particularly within San Antonio Center, and there are many reasons that a project site could remain composed of multiple parcels after development. The FAR flexibility provision was drafted to explicitly allow FAR to be calculated cumulatively across a project site, even if the site is composed of multiple individual parcels or would be developed over an extended timeframe under a master plan, rather than forcing strict application of 2.35 FAR (overall) and up to 0.75 FAR (commercial) on each individual parcel.**

**This FAR flexibility is intended to be a proactive planning/urban design tool to facilitate the right intensity/concentration of different land uses across multiple parcels. While it could in theory be applied as proposed by the applicant, the FAR flexibility was not envisioned as a “bank” for unused FAR or de facto TDR program that could be pulled from retroactively for subsequent development on different parcels and require tracking over time. In either case, application of FAR flexibility is entirely at Council’s discretion, and there may be other planning or urban design reasons to not allow some or all of the proposed FAR flexibility.**

## **ITEM 7.2 POTENTIAL 2020 COMMUNITY STABILIZATION AND FAIR RENT ACT AMENDMENTS**

*The following was submitted by Vice Mayor Abe-Koga, who chairs the Subcommittee and will speak to these issues at the meeting:*

*At the last CSFRA Subcommittee meeting, the Committee members came up with several questions we wanted to pose to Council for their direction. Could we please ask the Council the following in addition to the questions staff included in the staff report:*

- *Annual rent increases - CPI vs Flat Rate. There was no consensus on this item by the Committee and the Committee would like Council direction on whether to keep the current CPI increase or move to a Flat Rate of up to 5% yearly. There was also discussion on whether a short term rental assistance program could be created to assist any tenant who experiences hardship with the delta of the CPI vs 5%, up to a certain amount of time. The funding for such a program could come from the fee charged to landlords to administer the RHC, the Business License Tax set aside% for Housing, or a new revenue measure such as a parcel*

tax. There was also discussion of allowing a higher fixed rate for “good actors.” What is Council's preference?

- Mobile Home Parks - Committee consensus is to recommend that Mobile Home Parks be handled through a separate Council ordinance. There was concern that the ordinance would not be created by the time the CSFRA reform measure was placed on the ballot and voted on. One suggestion was that mobile home park units could be covered under CSFRA until a specific Mobile Home Park Ordinance was developed. What is Council's direction on this topic?
- Would Council prefer to place the ballot measure on the March 2020 ballot or the November 2020 ballot?

*Although staff included discussion on the question of CPI vs. Flat Rate in the body of report, stating the Subcommittee referred this item to the full Council, a specific question was not specifically asked in the report, but should have been included.*

*The topic of ballot timing (March 2020 vs. November 2020) is included as recommendation #3 in the Council report, but not called out in the specific questions to be answered.*

*In addition to the questions enumerated in the staff report, Council may discuss additional topics or questions, such as Mobile Home regulation, and provide additional or alternative direction to staff. Staff has responded to a separate question related to mobile home coverage.*

1. If there is a separate petition process for some improvements, is the intention to pass the costs along to the tenant (subject to perhaps an amortization schedule), even if the housing provider is deemed to be earning a fair rate of return?

**The CSFRA uses the maintenance of net operating income (MNOI) fair return standard. If the CSFRA is amended to also include a separate petition process, it has been the assumption that a separate process would not fall under the fair return standard. Instead, the separate petition process would have its own requirements/parameters – such as which capital improvements would be allowed for the separate process, how much can the total cost be passed through and how does it vary by capital improvements, the amortization period, if the pass through amount sunsets, etc. – which the CSFRA Subcommittee recommends that the RHC determine.**

2. Why would improvements that adapt the property to a new use be eligible for pass through? What does this mean? Would the property no longer to rental units? (page 12 of the staff report)

**Cities with this provision may have determined that such improvements extend the life of the building and/or provide value to the tenants. For example, there may be an under-utilized storage area adjacent to the apartment laundry room. The housing provider decides to expand the laundry room into the adjacent storage room to be able to install more washers and dryers for the tenants. The landlord could then pass through the improvement costs to the tenants in a jurisdiction, with such a provision. Eligible capital improvements that fall under this category could be specifically identified, or more general parameters could be used to provide some flexibility to the types of eligible improvements.**

3. If AB 1482 becomes law, would the City have two different rent control laws (i.e., the CSFRA for units covered by the CSFRA if the CSFRA is more restrictive than AB 1482, and AB 1482 for units covered by AB 1482 that are not covered by the CSFRA, and AB 1482 for units covered by the CSFRA when AB 1482 is more restrictive)?

**AB 1482 allows for local rent stabilization requirements to prevail if they are more restrictive. However, since the CSFRA exempts units built after 1995, the new State law will prevail for those units exempted by the CSFRA.**

4. What body would manage AB 1482 at the City?

**If 1482 is signed in to law, the CSFRA will continue to govern Fully Covered Rental Units, but there are ambiguities that will need to be worked through.**

**Some Partially Covered Rental Units under the CSFRA will have CSFRA just-cause protections and AB 1482 limits on rent increases.**

**For units that are covered by 1482 but are not covered by the CSFRA or for units that may be partially covered by the CSFRA and partially covered by AB 1482, there would not be any administration required on the City's part with respect to implementation of 1482. Essentially, as the law is currently written, it is up to the tenants to enforce 1482, so it is a complaint based statute and the tenants' enforcement rights would be through the courts, not through the City.**

5. Could staff provide an analysis of how much polling would cost and the timeframe?

**For reference, the City conducted a poll last year for a proposed revenue measure. The City contracted with a consultant to conduct the poll and it cost approximately \$25,000. It was estimated to take approximately four weeks to choose a poll consultant and another six weeks to prepare, conduct and analyze the poll results with a presentation to Council.**

6. It seems like polling could be helpful to determine public support or opposition to key modifications well before we craft ballot language. (For example, new categories for capital improvements eligible for pass-throughs, various AGA rates, etc.) When could this kind of polling be done?

**It would appear that the City would need approximately two months to secure a pollster and conduct the polling. If it is the Council's intent to have the CSFRA measure on the March 2020 ballot, the submittal deadline date is December 6, 2019 (with November 18 as the date targeted for final action). As such, the results from "preliminary" polling would likely be available around the time final decisions by Council are required.**

7. There was a suggestion to include mobile home parks in CSFRA until an ordinance could be adopted. Can staff provide an analysis of this idea?

**The Rental Housing Committee (RHC) adopted a resolution in 2018, finding that the CSFRA did not apply to mobile homes. The courts determined that the RHC's decision was reasonable because of the ambiguity of the CSFRA as to whether mobiles homes are covered. A lawsuit was filed and this decision is currently in appeal. If mobile home parks were to be included in**



amendments to the CSFRA on the City-initiated ballot measure, this would mean a significant workload to develop language that would apply specifically to mobile homes. Because of the number of outstanding items and the complexity of the issues that would need to be prepared as potential amendments, it would not be feasible to draft language for mobile homes for the March 2020 ballot, whether it is to cover mobile homes on a permanent or interim basis because the same issue areas would apply. Developing a mobile home rent stabilization ordinance is on the Council FY 2019-21 Major Goals workplan. A preliminary discussion of the issue could occur before March 2020, but not final adoption of an ordinance.

8. Why is it more expensive to place a measure on the March ballot than the November ballot? Aren't there economies of scale from placing a measure on a regularly scheduled election, rather than a ballot with no municipal elections?

The County of Santa Clara Registrar of Voters' election charges includes two rates for their fixed charges: an "initial item rate" and an "additional item rate." If a measure is placed on the ballot at the same time as a jurisdiction's officeholder election (November), the cost of the measure is charged at an additional item rate. The additional item rate is a lower rate charged to any additional items on the ballot for the jurisdiction on top of the "initial item rate" the City is charged for the officeholder election. The initial item rate is charged to the initial item or contest in the ballot for the entire jurisdiction. A measure placed on the ballot in March would be charged at the initial item rate, and therefore more expensive than a measure placed on the November ballot, which would be charged as an additional item.

9. What is the best way to protect mobile homes without a CSFRA amendment initiative, like pass a separate ordinance just for mobile home parks?

The CSFRA subcommittee recommends development of a separate mobile home park ordinance outside of the CSFRA. This would allow an ordinance to be developed specific to the characteristics of mobile home parks. A separate ordinance would also provide the needed timeline/process to draft a mobile home program as it is a significant workload.

10. What is the best way to streamline soft story retrofits without a CSFRA amendment initiative?

Under the current CSFRA, the RHC could adopt Regulations to provide for a streamlined petition process for mandatory soft story retrofits. This petition process, however, would need to be evaluated under the Maintenance of Net Operating Income (MNOI) fair rate of return process. Landlords seeking a rent adjustment under the fair return petition process would still need to submit evidentiary documentation regarding the capital improvement expense as well as all other operating expenses to demonstrate need for a fair return. A hearing officer reviews the information and makes a determination on the amount of rent adjustment allowed under fair return, if any. If the intent is to develop a separate petition process outside of the MNOI fair return standard, then an amendment would be needed.

11. Do we have a list of current rent stabilization cities in CA and how they calculate rent increases (CPI, % of CPI, flat rate, etc.)?

Jurisdictions	CPI
Alameda	70% CPI-U
Berkeley	65% CPI-U
Beverly Hills	100% CPI-U (3%-8%)
East Palo Alto	80% CPI-U
Los Angeles	100% CPI-U (3%-10%)
Mountain View	100% CPI-U (2%-5%)
Oakland	100% average CPI-U and CPI-less shelter (max 10%)
Richmond	100% CPI-U
San Francisco	60% CPI-U (max 7%)
Santa Monica	75% CPI-U
West Hollywood	75% CPI-U
Jurisdictions	Fixed Percentage
Hayward	5%
San Jose	5%
Los Gatos	5%

**ITEM 8.1 GUN SAFETY-RELATED ISSUES**

*It should be noted this was a recently raised Council-initiated item and staff has not yet fully researched the issues before getting direction to do so. Below are answers to the best of our knowledge at this point.*

1. How many gun shops are in Mountain View? Is it one?

**There are currently five active business licenses in the City relating to gun shops, two with active store fronts: Eddy’s Shooting Sports (400 Moffett Blvd) and Bay Area Gun Vault West LLC (363 W. El Camino Real). The other three are federally licensed firearm dealers who are authorized to conduct business from their personal residences.**

**With home businesses, the seller makes the sale over the internet then ships the gun to a federally licensed dealer. The buyer then must to go to that dealer in person, fill out paperwork, and undergo a background check before picking up the gun. No gun sales actually occur within the home business itself.**

2. Why did Sunnyvale include exemptions for active duty military and law enforcement personnel in their restrictions on purchases of semiautomatic center-fire rifles by persons under 21?

**It is our understanding the exceptions were due to the fact that individuals under the age of 21 can be active duty military and law enforcement personnel, and the possession of such weapons in the course and scope of his or her employment are typically required.**



3. Wasn't Sunnyvale sued for these restrictions and how did that play out?

Sunnyvale was not sued for the 2018 ordinance, but was sued in 2013 for Measure C, which was a measure that added certain gun safety measures, including the prohibition of large-capacity magazines, to the City of Sunnyvale's Municipal Code. In *Fyock v. City of Sunnyvale*, the 9th District upheld a denial of a preliminary injunction blocking the measure, essentially holding that Sunnyvale had presented sufficient evidence to show that the measure was constitutional.

4. What kind of public outreach did Sunnyvale do?

Staff confirmed with the City of Sunnyvale City Attorney's Office that Sunnyvale did not perform additional public outreach outside of the Council's customary noticing for public hearings.

5. Attachment 1 states that the listed legislation is from cities of 90,000 people or more. Does Mountain View have any of these laws?

The MV City Code does not have provisions relating to the selling or possession of firearms, but does have provisions relating to the discharge of firearms (MVCC §§ 21.13 & 38.9).

6. Does staff know if the Gifford Center, the Brady Center or any similar advocacy group recommends legislation that they think would be most important, effective or strategic for cities to enact?

The Giffords Law Center's Model Laws for a Safer America, provide state and local agencies with sample language for seven regulations that "promote responsible gun ownership and sales." The model laws are provided in a publication that must be requested, but it encompasses: 1) requiring background checks on all gun purchasers; 2) licensing of firearm owners; 3) registration of all firearms; 4) regulation of firearms dealers and ammunition sellers; 5) requiring the reporting of lost or stolen firearms; 6) imposing a waiting period before the sale of a firearm; and 7) limiting firearm purchases to one per person every 90 days.

The Brady Center's Comprehensive Plan, aimed at preventing gun violence, includes: 1) performing background checks; 2) expanding categories of prohibited purchasers; 3) restricting access to weapons of war; 4) restricting bump stocks; 5) outlawing ghost and 3D guns; 6) enacting extreme risk laws (which remove guns from the possession of those persons who pose a high risk of violence); 7) funding CDC research; 8) funding for urban programs; 9) reducing unintentional shooting injuries and deaths (i.e. family fire); 10) ending gun industry immunity; 11) holding the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) accountable for better regulation; and 12) eliminating the Tiahrt amendment (which restricts access to data from the corporate gun industry). The Brady Center's Plan seems to focus more on a federal rather than a local approach, specifically calling on Congress to enact legislation.

These model laws/general principles could be used as guidelines or best practices by the Council in its potential development of gun safety related regulation, but will still require legal analysis prior to implementation to ensure compliance with state and federal laws.