



# COUNCIL REPORT

**DATE:** September 27, 2022

**CATEGORY:** Consent

**DEPT.:** Community Development

**TITLE:** **Additional City Funding Contribution to Support Development of 20 Units for City Employees as Part of the Mountain View Whisman School District BMR Residential Project at 777 West Middlefield Road**

## **RECOMMENDATION**

1. Appropriate \$1.06 million from the Strategic Property Acquisition Reserve to supplement the City's original \$2 million one-time funding contribution to support development of 20 low- and moderate-income units for City employees as part of the Mountain View Whisman School District below-market-rate residential project within the 777 West Middlefield Road project.
2. Direct staff to pay for the original \$2 million contribution amount through the Strategic Property Acquisition Reserve without reimbursement from the Below-Market-Rate Fund.
3. Authorize the City Manager or designee to execute a Funding, Joint Use, and Development Restriction Agreement in the amount of the original and additional contribution, for a total of \$3.06 million, with the Mountain View Whisman School District for the first right of refusal for City employees to occupy 20 of the affordable rental units within the Mountain View Whisman School District project at 777 West Middlefield Road.

## **BACKGROUND**

On May 21, 2019, the City Council approved a residential Gatekeeper project at 777 West Middlefield Road for the demolition of 208 existing rental units subject to the Community Stabilization and Fair Rent Act (CSFRA) and the construction of 716 new rental units, 572 units of which would be market-rate apartments within two buildings and 144 units would be below-market-rate units in a separate building, all on the same project site.

The project initially began in July 2015 with a Gatekeeper authorization and had evolved over the course of the project's entitlement process. In 2018, the applicant (Fort Bay at that time, now Mountain View Owner, LLC, or MVO) began discussions with the Mountain View Whisman School District (MVWSD) to form a public-private partnership for MVWSD to finance and operate the affordable housing that would be required as the project's Below-Market-Rate (BMR) affordable housing program obligations. On October 23, 2018, Council held a Study Session to discuss the

project's proposal for an alternative mitigation to the standard BMR requirements in effect at that time.

The project's BMR requirements, approved as part of the project entitlements at the May 2019 City Council hearing (see Attachment 1), were based on direction from the October 2018 Study Session (see Attachment 2). The following is a summary of the project's key terms/requirements based on the Council Study Session direction and entitlement hearing and decision:

- a. Approval of BMR alternative mitigation request for 144 affordable units deed-restricted (i.e., 20% of 716 total units) in perpetuity, where 15% of the 716 units would be at moderate-income rents (120% AMI) and 5% at low-income rents (80% AMI).
- b. Of the 144 affordable units, 124 units would be for teacher and staff housing units for the MVWSD and 20 units available to City staff.
- c. Park Land Dedication In-Lieu Fee Credit, including a private open space credit and an affordable housing credit, allowing the moderate-income units to count towards the credit.
- d. Reduced parking for the affordable units (144 spaces instead of 182 spaces that would have been required through the City's Model Parking Standards). (The developer's contribution towards the project would include constructing the 144 parking spaces and amenities (clubhouse, etc.) for the MVWSD residential project within the market-rate project.)
- e. Authorization for the City Manager or designee to execute a Joint Funding and Development Restriction Agreement to provide a one-time City contribution of \$2 million to MVWSD toward the affordable housing project to facilitate the ability of City employees to have a right of first refusal for 20 units and to preserve the open space at Cooper Park for the term of the ground lease between MVWSD and the developer, which will be at least 55 years. Through a recorded development restriction, development of the property would be restricted to the development of school, educational (including day care, private school, and associated athletic facilities), recreation, or open space purposes. Development of housing on Cooper Park would be specifically prohibited during the term of the ground lease.

Additionally, per the BMR and funding agreements, the following process will be followed:

- The composition of the City units, in terms of the number of bedrooms in each unit, will be in proportion to the number of bedrooms in the affordable housing project, to the extent possible.

- The City units shall be reasonably dispersed throughout the Employee Housing.
- At any time during the term of the MVWSD ground lease, if not all of the City units have been occupied by City employees, then MVWSD shall have the right to offer the remaining City units to MVWSD employees or other eligible tenants, including employees of other local school districts and the public.
- During periods when the City does not fully occupy the City units, MVWSD shall offer the first right to occupy of the next vacant unit to the City. During periods when City employees fully occupy the City units (for a total of 20), MVWSD is not obligated to offer the first right to occupy a vacant unit to the City.

## **ANALYSIS**

### **Project Status**

Since the project's approval in May 2019, the City has been working on the following agreements prior to issuance of the building permit:

- BMR Agreement (to be executed by the City, MVO, and MVWSD); and
- Funding, Joint Use and Development Restriction Agreement (Joint Agreement) related to Cooper Park, the City's financial contribution toward the affordable housing units, and administration of the units (to be executed by the City and MVWSD).

The intent was that the City and MVWSD Joint Agreement would be completed soon after the entitlement hearing, and executing the BMR Agreement typically must be completed before issuance of a project's first building permit; however, neither agreement has yet been completed, in part due to delays associated with COVID-19. Therefore, the City has not yet provided MVWSD with the \$2 million funding contribution. In order to keep the project on track, grading, foundation, and underground structure permits have already been issued; however, before superstructure permits are issued (which will be the next permits), the BMR and funding agreements will have to be executed.

Additionally, construction costs have escalated significantly since the project's approval. MVWSD estimates that the cost to build the 144 BMR units has gone from approximately \$55.47 million to \$84.78 million currently, an increase of nearly 53%. While the School District has sufficient funding to absorb the costs, they have indicated that any additional costs would likely render the project infeasible.

### *Staff Recommendation*

Due to the increase in construction costs for the project, staff recommends that Council approve increasing the City's one-time funding contribution for the right of first refusal for 20 affordable units for City staff. Staff believes that it is reasonable to increase the contribution for the reservation right and to base the increase on the 53% increase of the cost of constructing the BMR units. This would increase the one-time \$2 million City contribution to \$3.06 million. The parameters of the Joint Agreement authorized in 2019 would otherwise remain the same as described in the May 2019 Council report in Attachment 1.

The initial \$2 million contribution was to be paid for through the City's Strategic Property Acquisition Reserve (SPAR) and reimbursed with BMR funds, based on Council direction in 2019. Since this funding is being provided for the right of first refusal to the City for 20 units in the MVWSD residential project and the Cooper Park development restriction, staff recommends that the \$3.06 million be paid with SPAR and not be reimbursed with BMR funds. The payment would be subject to the execution of the above agreements.

### **NEXT STEPS**

MVO/MVWSD seeks their next building permit in October 2022. If Council approves the staff recommendation, staff, MVWSD, and MVO will work expeditiously to finalize and execute: (1) the BMR Agreement between the City, MVO, and MVWSD; and (2) the Joint Agreement with MVSWD prior to issuance of the project's superstructure building permit. This will allow both agreements to be put in place and for the project to continue moving forward without delays or incurring additional costs.

### **FISCAL IMPACT**

Funding in the amount of the \$3.06 million is recommended to be paid from the City's SPAR funds, which has an adequate balance to cover this amount. There is currently \$14.1 million in the SPAR, which would leave \$11.04 million after payment of the one-time contribution to the project.

### **ALTERNATIVES**

1. Direct that either the additional funding of \$1.06 million or the entire amount of \$3.06 million be paid with BMR funds.

2. Do not increase the City's one-time funding contribution from \$2 million to \$3.06 million, and direct staff to work with MVO/MVWSD to complete the BMR Agreement and Joint Agreement prior to issuance of the next building permit.
3. Provide other direction to staff.

**PUBLIC NOTICING**—Agenda posting.

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- Attachments:
1. Project Entitlement Hearing—May 21, 2019
  2. Council Study Session—October 23, 2018