City of Mountain View

COUNCIL REPORT

DATE: April 22, 2025

CATEGORY: Consent

DEPT.: Housing

TITLE: **Amendments to the Lease Disposition, Development, and Loan Agreement with Lot 12 Affordable Housing Developer**

RECOMMENDATION

1. Appropriate up to $6.2 million for the Lot 12 affordable housing project, including up to $4 million in the City's Housing Impact Fund and up to $2.2 million in the City's Rental Housing Impact Fund pending final negotiations with the development team. (Five votes required)

2. Authorize the City Manager or designee to amend the Lot 12 Lease Disposition, Development, and Loan Agreement with MV Lot 12 Housing Partners, L.P. (Developer), and execute any necessary documents to incorporate supplemental City funding, adjust the unit mix to include Permanent Supportive Housing units, waive the project's $10.1 million ground lease payment, and implement related administrative modifications to the SB 35 application.

3. Authorize termination of the Lease Disposition, Development, and Loan Agreement if the Developer does not secure funding by December 31, 2025, and direct staff to initiate a new developer selection process.

BACKGROUND

Facilitating an affordable housing development on Lot 12 has been a desired project for the City for nearly two decades.[1] In May 2019, prior to the COVID-19 pandemic and during a period of prime economic conditions for affordable housing development, the City initiated the Request for Qualifications (RFQ)/Request for Proposals (RFP) process to select a developer to build

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[1] The City's first attempt at selecting a developer through a Request for Qualifications/Request for Proposals process occurred in December 2008, when Council authorized staff to market Lot 12 for a long-term ground lease for a mixed-use development to include market-rate housing, below-market-rate housing, and a grocery store. The City received only two proposals, and both were rejected by Council: one because it was contingent on the City selling the land rather than leasing it, and the other because of unfavorable financial terms. The lack of interest and poor proposals were attributed to the onset of the Great Recession in 2008.

affordable housing on Lot 12 (See Attachment 1 for Lot 12 RFP). On May 19, 2020, shortly after the state and the City issued emergency declarations in response to the pandemic, the City Council selected the joint development team of Related Affordable and Alta Housing, collectively MV Lot 12 Housing Partners, L.P. (Developer) (see Attachment 2 for May 19, 2020 Council report).

After the Developer was selected in May 2020, the following key steps were taken:

- June 2021—Closed Session held to discuss price and terms.

- August 2021—The City Council approved key deal terms in Open Session, including the Developer's $10.1 million ground lease payment for replacement parking, the City's indirect contribution of the full Lot 12 land value, and $12.25 million in direct funding. This funding included $8 million awarded to the City for the Lot 12 project through Senate Bill 129 (State Budget Act of 2021).

- January 2022—Execution of the Lease Disposition, Development, and Loan Agreement (LDDLA), which formalized the price and terms of the project. The Developer also submitted the project's SB 35 planning application.

- April 2022—Project approved through the SB 35 ministerial process.

- May 2024—The City Council approved an additional $5 million in City funding (bringing the total to $17.25 million) and authorized project modifications, including changes to the floor plan, construction management plan, unit income levels, and the designation of 15 units for individuals with intellectual and developmental disabilities (IDD).

<u>Difficult Development Conditions and Project Funding Challenges</u>

Since the project's approval in April 2022, the Developer has applied for multiple rounds of both federal and state tax credit financing but has been unsuccessful in every round. In December 2024, the Developer met with City staff to discuss potential modifications to their project as discussed further in the Analysis section. The Developer noted that the current project was not competitive given the economic conditions, intense competition for tax credit financing, and the Lot 12 RFP requirements (particularly the requirement to replace the 160 public parking spaces); and indicated that all five changes in the Analysis section below are necessary to bring costs down sufficiently and be competitive for tax credit funding. Even with the changes, a funding gap would still remain, requiring additional contributions from the City as well as its external funding partners as discussed further below in the "Additional Funding" section.

Staff, in consultation with the City's economic advisory consultant and public agency funding partners (County and Housing Authority), has conducted extensive due diligence to evaluate the Developer's requests and have concluded:

— The Lot 12 RFP priorities and current 120-unit project, as approved, are not economically viable in today's market and funding conditions.

— The current project would need to be modified to maximize its competitiveness to secure necessary funding (especially federal tax credits, which is the most important funding source).

— The modified project appears competitive for the upcoming round of federal tax credits (application due on May 20, 2025). However, funding is not guaranteed.

ANALYSIS

On March 25, 2025, Council held a Closed Session on price and terms for the LDDLA and supported the following five project modifications as requested by the Developer. Council support for the changes is contingent upon the Developer securing the necessary tax credit funding to advance the project by the end of 2025. If the funding is not secured by the end of 2025, the LDDLA would not be extended and would be terminated on or after January 2, 2026.

- **Request No. 1: Waive the replacement parking requirement and the Developer's $10.1 million ground lease payment.**

  Analysis: Staff's assessment is that the Lot 12 RFP requirement to replace the 160 public parking spaces is not viable in today's conditions for any developer, which is significantly driven by challenging, lasting economic factors due to the pandemic. Additionally, the feasibility of replacement parking was discussed at length in the October 9, 2018 Study Session.

  The required replacement parking and $10.1 million ground lease payment reduce the project's competitiveness for federal tax credits as the payment is not an eligible cost and limits the points the project can earn—putting it at a disadvantage compared to other projects without this expense. Additionally, the ground lease payment increases the funding gap, which impacts project feasibility.

- **Request No. 2: Waive the requirement to include nonresidential uses.**

  Analysis: The Lot 12 RFP includes a requirement to include nonresidential uses to create a mixed-use project intended to foster a sense of place and provide amenities for both the on-site residents as well as for the broader community. As noted, the current project includes space for 3,000 square feet of nonresidential uses (2,200 square feet of commercial space and 800 square feet of maker space). The Developer seeks to eliminate the nonresidential uses and convert the space into resident-serving uses. ***Waiving the nonresidential requirement and allowing the conversion of the space to resident-serving uses reduces the funding gap by $1.5 million***.

- **Request No. 3: Modify on-site parking requirements by eliminating spaces for nonresidential uses and parking stacker system.**

  <u>Analysis:</u> The Lot 12 RFP includes a requirement to include parking spaces on-site for the residential units and the nonresidential units. The project design currently includes 95 on-site parking spaces (82 for residential, 13 for nonresidential), including the use of a parking stacker system for 79 of the spaces. As noted in Request No. 3, the Developer has requested to waive the nonresidential uses, which—if approved—would also eliminate the need to provide on-site parking for nonresidential uses. ***Eliminating the stacker system would reduce the number of spaces from 95 to 61, which would be allocated for the residential units only. The approved project has a parking ratio of 0.68 (82 parking spaces/120 units). Approval of this request reduces the parking ratio to 0.51 (61 parking spaces/120 units). These changes are estimated to reduce project costs and funding gap by $1.3 million. The Developer will implement a parking management plan to maximize the utilization of the on-site parking spaces and minimize spillover parking.***

- **Request No. 4: Add permanent supportive housing (PSH) units to the project.**

  <u>Analysis:</u> The current project includes 20 units designated for Rapid Rehousing (RRH) and 15 units for individuals with intellectual and developmental disabilities (IDD). The Developer is actively working with the Santa Clara County Housing Authority (Housing Authority) to add 10 units of Permanent Supportive Housing (PSH) to the project. These PSH units would be supported by project-based vouchers with an initial contract term of 20 years, providing long-term stability for the project's operating income. The Developer intends to assign all 10 PSH to larger households in two- and three-bedroom configurations to meet the needs of families experiencing homelessness. Any modifications to the unit mix or target populations are subject to City approval as well as approval of other funding agencies such as the County Office of Supportive Housing and the Housing Authority.

  With the 20 RRH units and addition of 10 PSH units, approximately 25% of the total units (30 RRH/PSH units out of 120 total units) would be reserved for formerly unsheltered individuals or households. PSH households have longer and/or more frequent episodes of homelessness as well as a "disabling" condition such as mental health conditions; while RRH households have fewer and shorter episodes of homelessness and do not have a disabling condition. These units meet County Measure A funding requirements, which is a source of funding for this project) and it is relatively common for a project serving formerly unsheltered persons to have both RRH and PSH units in the same project. The Developer has experience with serving these populations and will have onsite case management services. The unit mix supports the City's goals and funding priorities, including the 2022-27 Affordable Housing Strategy and Homeless Response Strategy. ***Additionally, reaching this threshold enhances the project's competitiveness for the federal tax credit programs and qualifies the project for additional funding that includes supportive housing units.***

- **Request No. 5: Remove Condition of Approval No. 43 related to work stoppage resulting from damaging existing trees in the public right-of-way.**

Analysis: The current project entitlement includes a Construction Management Plan (CMP) which requires: (1) construction access to the site be limited to Bryant Street; and (2) preservation of 11 of the 12 non-Heritage street trees along the public right-of-way on Bryant Street. One tree is already approved for removal to allow for a new driveway.

All 12 trees are Chinese pistache, ranging from 6" to 10" diameter. A tree assessment by SavaTree (dated September 20, 2023) found that of the 11 trees to be preserved, 10 trees are in good condition, and one is in fair condition.

The approved project also includes Condition of Approval (COA) No. 43, which imposes work stoppages and fines if any of the trees are damaged during construction. The Developer has conveyed to staff that they appreciate the importance of preserving the existing trees. However, they state that the combination of the tree preservation requirement in the CMP and COA No. 43 poses too much project risk related to potential construction delays and cost increases due to work stoppage in the event of tree damages. The Developer asserts they would not be able to advance the project if COA No. 43 remains a project condition. The Developer requests waiving COA 43, and the replacement of any damaged tree on a 1-to-1 basis with an equivalent tree (based on size, maturity, tree canopy, and species).

During the March 2025 Closed Session, Council supported this request and additionally requested that the Developer explore removing an additional tree out of the remaining 11 trees (for a total of 10 remaining trees) on the condition that two trees be immediately replaced anywhere in the City and a third tree be planted on-site at project completion, for an overall 3:1 replacement ratio for this removed tree. The purpose of this option is to minimize the chance of damaging the remaining existing street trees by creating a larger ingress/egress onto the site. The Developer has agreed to remove one additional tree with a 3:1 replacement ratio for that tree.

Additional Funding

Council approval of the five modifications requested above would still result in a funding gap of $13.7 million for the project. In response, the Santa Clara County Office of Supportive Housing and Destination: Home have confirmed they will provide additional funding to help fill the gap. Specifically, the County will increase its $14.75 million in permanent funding by converting a current $5 million bridge loan to permanent funding, resulting in a total County commitment of $19.75 million in permanent funding. Destination Home will convert its $2.5 million in pre-development funds to permanent funding. The Housing Authority has also confirmed that 10 additional project-based vouchers can be allocated to the project, pending their review of the Developer's request for the additional vouchers. Factoring the additional funding commitments from the City's external partners, staff is recommending the City provide a subsidy of up to $6.2 million to fill the remaining gap. The amount may be lower pending final discussions with the Developer and review of their pro forma.

The project currently has an estimated $6.2 million funding gap. ***Staff has determined that there is sufficient fund balance in the City's housing funds to fill this remaining gap.***

Total City Contribution

Table 4 summarizes the City's total direct (cash) contribution—and the per-unit amount for each option.

Table 4: City Contributions

Direct City Contributions	Funding Amount
Initial City Funds	$4.25 million
Additional City Funds (May 2024)	$5 million
Current City Subtotal	**$9.25 million**
SB 129 Grant Award[2]	$8 million
City Total with Grant	**$17.25 million**
Additional Subsidy	$6.2 million
Total	**$23.45 million**
Per-unit City subsidy (without SB 129 Grant)	$129,000/unit
Per-unit City subsidy (with SB 129 Grant)	$195,000/unit

[2] Through the leadership of Senator Josh Becker, the City received a grant award of $8 million for the Lot 12 project via Senate Bill 129 also known as the State Budget Act of 2021.

The total City subsidy of $23.45 million will result in a per-unit subsidy of $195,000. Given the external funding challenges, this is a reasonable amount and is line with the City funding amounts for projects from just a few years ago.

Next Steps

The Developer is in the process of applying for 10 additional project-based vouchers via the Housing Authority, as well as preparing to apply for the second round of tax credits due by May 20, 2025. The Developer will provide the applications to the City and funders for review prior to their submittal.

Additionally, immediately following the City Council's Closed Session on March 25, 2025, staff from the Housing, Community Development, and Public Works Departments met with the Developer to establish a schedule and confirm submittal package requirements for a revised SB 35 application. The requested project changes must be approved by the City Council in open session prior to modifying the LDDLA in accordance with the recommendations in this report. Both the revised SB 35 application and execution of the modified the LDDLA must be completed prior to the May 20, 2025 tax credit deadline to meet submittal requirements; meeting this deadline will require the Developer to provide responsive and timely delivery of complete, high-quality documents, plans, and information.

FISCAL IMPACT

Council's approval of supplemental City funding will not have an impact on the City's General Fund. The additional funding contribution of up to $6.2 million will come from the City's Housing Impact Fund ($4 million) and the Rental Housing Impact Fund ($2.2 million), both of which have sufficient funding to cover the appropriation.

LEVINE ACT

California Government Code Section 84308 (also known as the Levine Act) prohibits city officials from participating in any proceeding involving a "license, permit, or other entitlement for use" if the official has received a campaign contribution exceeding $500 from a party, participant, or agent of a party or participant within the last 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html

Please see below for information about whether the recommended action for this agenda item is subject to or exempt from the Levine Act.

SUBJECT TO THE LEVINE ACT
☒ Land development entitlements
☒ Material contract modification or amendment

CONCLUSION

Lot 12 remains a priority project in the City's affordable housing pipeline and is identified in the City's Housing Element sites inventory. However, the currently approved project is infeasible. The Developer has requested five project changes. Council supported these changes during the March 25, 2025 Closed Session, and approval of these changes in open session is required to move the project forward and modify the LDDLA.

ALTERNATIVES

1. Choose not to authorize amendments to the LDDLA or appropriate additional funding.
2. Provide direction on alternative terms.
3. Provide other direction.

PUBLIC NOTICING

The meeting agenda and Council report have been posted on the City's website and announced on Channel 26 cable television.

Prepared by:	Approved by:
Deanna Talavera Senior Housing Officer	Wayne Chen Housing Director
	Audrey Seymour Ramberg Assistant City Manager

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Attachments:
1. Lot 12 Request for Proposals
2. May 19, 2020 Council Report