



# MEMORANDUM

City Manager's Office

**DATE:** April 15, 2022

**TO:** Mayor and Councilmembers

**THROUGH:** Steve McHarris, City Manager *Steve McHarris*

**FROM:** Ashwini Kantak, Assistant City Manager *Ashwini Kantak*  
Sharon Goei, Building Safety and Housing Director

**SUBJECT:** Eleanor Apartments Project Proposal

## BACKGROUND

At the March 15 City Council meeting, staff was directed to agendize a discussion about the potential conversion of Eleanor Apartments located at 312 Gates Drive to a moderate-income housing project through the California Statewide Communities Development Authority.

At the February 15 City Council meeting, Council adopted [Goals and Performance Measures](#) for this type of moderate-income housing program and presented recommendations for a Public Benefit Agreement (PBA) for a similar program for the Turing apartments located at 1355 McCandless Drive.

Although the Turing project team had made several changes to their original project proposal and draft PBA since the original proposal was submitted in May 2021, the adopted PBA still did not align with the Council's adopted goals and measures for this type of program. Council deliberation included an acknowledgment that since this was a new concept for Milpitas, the Turing proposal could be considered for approval, while the process along with the adopted Goals and Performance Measures, provided ample information for future applicants to understand the City's expectations for any other such project proposals.

The Eleanor Apartments project representative has stated that their proposed project will not be viable if they are required to comply with the recent Council adopted goals and performance measures. Their project team is seeking the same terms included in the Turing PBA.

We also remind the Council that, as noted in the [February 15 staff report, Item 16](#), the approved PBA for the Turing project does not meet the adopted Goals and Performance Measures in several areas related to Affordability, Financial Considerations, Capital Investments, and Transparency and Oversight. The approved PBA also does not adequately mitigate potential future risks identified by the City's financial consultants, City Attorney's Office, and staff.

Another consideration for the proposed project is the availability of staffing resources. Although the Turing project team paid for consultant costs, a significant amount of staff time was spent on the project, which was not reimbursed, and diverted staff attention away from other City Council work priorities. Given the vacancy rate in Housing and the many federal and state-mandated projects currently underway, Housing staff will not be able to initiate this project without securing additional staffing resources to manage the project. Additionally, the Turing project required a considerable amount of time from staff in Finance and the City Manager's Office, and from the City Attorney. With the Proposed FY 2022-2023 Budget currently underway, staff will only be able to initiate the proposed project analysis upon securing staff dedicated to working on this project. And at that time, the proposal analysis will require setting up a funding mechanism with the project applicant to pay for staffing and consultant costs. Additionally, procurement of consulting resources will require staff resources across multiple departments.

## Attachments:

Attachment 1: Adopted Goals and Performance Measures

Attachment 2: Alignment of Proposal with Adopted Goals and Measures



**City of Milpitas**  
**Framework for Evaluating**  
**City Participation in Middle-Income Workforce Housing Proposals**

**GOALS AND PERFORMANCE MEASURES**

**AFFORDABILITY CONSIDERATIONS**

**GOAL A: AFFORDABILITY LEVEL**

**Project will primarily serve Moderate Income Households during the entire bond period.**

***Performance Measures:***

- A1. Housing units will be below market-rate and affordable to Moderate-Income Households earning 81-120% average median income (AMI), as defined by the California Department of Housing and Community Development (HCD) maximum household income and rent limits for Santa Clara County. Units for Low-Income Households (80% AMI or below) as defined by HCD are also encouraged.
- A2. Maximum rents shall be based on Moderate Income Households paying a maximum of the 30% of their gross household income for housing costs consisting of rent and utility expenses paid by tenants.

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**GOAL B: RENT INCREASES**

**Rent increases will be limited to maintain the affordability of the project for primarily Moderate Income Households during the entire bond period.**

***Performance Measures:***

- B1. Annual rent increases will not exceed 4% or the annual allowable percentage rent increase established by federal Department of Housing and Urban Development (HUD), whichever is lower.
- B2. Owner or Property Administrator agrees to submit proposed rent increases for City review and approval that verifies affordability requirements/covenants will continue to be maintained. City will be allowed 30 days to review and approve the rent increase proposal.

B3. Owner or Property Administrator agrees to submit an annual report to City that certifies and confirms that affordability covenants, including rent increases, comply with HCD standards for affordability to Moderate Income Households.

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**GOAL C: EXISTING TENANTS**

**Existing project tenants will not be displaced by the public benefit, regulatory, or other agreements.**

*Performance Measures:*

- C1. Non-Qualified Tenants (exceeding 120% AMI per California Tax Credit Allocation Committee (CTCAC) standards) will be allowed to remain in unit paying market rents until they choose to move out.
- C2. Qualified Tenants (120% AMI or below per CTCAC standards) will be allowed to benefit from a minimum 10% reduction in current project market rents.

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**GOAL D: LOCAL PREFERENCE POLICY**

**A preference program will be established for qualifying residents and employees with a primary work location in the City of Milpitas.**

*Performance Measures:*

- D1. Subject to City review and approval, Owner or Property Administrator agrees to establish and administer a tenant preference program with administrative guidelines, marketing plan, and screening procedures that define benefiting households and employees. Confirm compliance with state and federal fair housing regulations.
- D2. Priority will be provided to qualifying teachers and administrative, maintenance, and support staff that are employed by the Milpitas Unified School District or other public education institution with a Milpitas job location.

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**GOAL E: REGIONAL HOUSING NEEDS ALLOCATION (RHN) CREDIT**

**Projects will qualify for full or partial RHN credit, if feasible.**

*Performance Measures:*

- E1. Project complies with AB 787 criteria for full or partial RHN credit:
  - a. No existing units affordable to very low, low, or moderate-income households;
  - b. Affordable to moderate income households for 55 years;
  - c. At least 10% reduction in average monthly rents from previous 12 months;
  - d. Rents based on 100% AMI established by CTCAC;
  - e. Units in decent, safe, and sanitary condition;
  - f. Project not acquired by eminent domain;
  - g. Government monitoring program established to ensure affordability and occupancy by qualifying households; and
  - h. A public entity shall hold an assignable right to purchase development.

## FINANCIAL CONSIDERATIONS

### GOAL F: QUALIFICATIONS OF PROJECT TEAM

**Project will be owned and managed by a highly experienced and reputable Property Administrator and Property Manager.**

*Performance Measures:*

- F1: Property Administrator demonstrates a minimum of ten years of extensive expertise and financial capability in financing, developing, and managing at least 5,000 units of comparable market-rate and affordable (income and rent restricted) residential projects in California.
- F2. Property Manager demonstrates a minimum of ten years of extensive financial and operations experience managing a portfolio of at least 5,000 units of comparable market-rate and affordable (income and rent restricted) residential projects in California, including administering local preference programs.

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### GOAL G: CITY EVALUATION OF PROPOSALS

**Proposals will be evaluated for compliance with Goals and Performance Measures with professional and technical assistance as necessary.**

*Performance Measure:*

- G1. Project proponent deposits funds as determined by the City to retain independent financial, economic, and/or property management consultants to analyze the proposal and provide findings and recommendations on affordability terms, cashflow analysis, pro forma, property condition assessment, capital improvement needs, bond/financing structure, administrative fees, and draft agreements.

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### GOAL H CITY REVENUES

**City participation will not result in a loss of City property taxes, special taxes, or property tax in lieu of vehicle license fees (PTILVLF).**

*Performance Measures:*

- H1. Project will fully backfill the City's any lost property tax and PTILVLF revenues through an upfront and/or annual payment of a Host Fee to the City with an annual increase of 2%. Host Fee shall be based on the post-sale assessed valuation of the property.
- H2. Host and other applicable City fees will be paid before operating expenses, administrator fees, debt service (bond principal and interest), and any bond reserve fund deposits, and will be paid from other sources if operating revenue is insufficient to meet this obligation.
- H3. For mixed used projects, property taxes pertaining to the non-residential portion of the property will continue to be paid.

H4. Where applicable, an annual Infrastructure Fee will be paid equivalent to City special taxes pertaining to inclusion in a community facilities district or assessment district with annual increase as specified.

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**GOAL I. PROJECT FINANCIAL VIABILITY**

**Project demonstrates positive cashflow and ability to fully cover its debt service and operating expenses during the bond or agreement period to reduce financial risks and assure long-term viability.**

*Performance Measures:*

- I1. Through consultation with an independent real estate or economic consultant, income and expense assumptions conservatively reflect historical trends for residential projects in Milpitas or Santa Clara County.
- I2. Project Condition Report demonstrates a minimum 1.0 Debt Coverage Ratio (DCR) during the entire bond period with rental income based on conservative assumptions and the affordability goals and performance measures in Goals A and B.
- I3. Cash flow analysis and pro forma demonstrate ability to cover amortized principal and interest payments during the bond term based on conservative assumptions.

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**GOAL J: CITY FINANCIAL RISK/BOND STRUCTURE**

**The financing plan and bond structure for the project is sound and consistent with industry standards for multi-family revenue bonds and reduces City risks and liability.**

*Performance Measures:*

- J1. A minimum of 25% of the aggregate principal will be paid within 10 years of bond issuance; bond term will not exceed 35 years.
- J2. Bonds will be optionally redeemable within 10 years of issuance with call premium consistent with investment grade municipal bonds.
- J3. Bond principal redemption will be mandatory and paid under the same lien position as bond interest payments.
- J4. Administrator fees will be paid after payment of bond interest and principal, any bond reserve fund deposits, and payable with annual excess cashflow only.
- J5. Bond issuance fees and expenses will be in line with other similar middle income housing programs in California.
- J6. Bond issuer will notify the City of any material changes to the project during the bond term, including updates to cashflow analyses or pro formas as needed.
- J7. Public Benefit Agreement or Regulatory Agreement includes indemnification clause that limits the City's liability and exposure as the Project Host and program participant.

J8. City will be entitled to 100% of the property's reversion value at the end of the bond term, without any obligation to share any proceeds to other taxing entities.

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**GOAL K: REFINANCING/ADDITIONAL DEBT**

**City will have the authority to approve any refinancing, restructuring, or issuance of additional debt.**

*Performance Measure:*

K1. Public Benefit Agreement, Regulatory Agreement, and/or Indenture include provisions that stipulate the City's approval authority for any debt refinancing, restructuring, or issuance of additional debt or encumbrances during the bond term.

## **LEVEL OF CAPITAL INVESTMENT**

**GOAL L: CAPITAL IMPROVEMENTS**

**Capital improvement needs for the project are fully identified and funded for the entire bond or agreement period.**

*Performance Measures:*

- L1. Capital improvement and replacement needs with estimated costs are determined that cover the entire bond period.
- L2. Project Condition Report (pro forma or cash flow analysis) demonstrates that capital improvement and replacement costs will be covered by project reserves and operating income during the entire bond period.
- L3. An updated capital improvement assessment will be prepared at least every five years, or sooner if requested by the City, that assesses the capital needs and expenses for the project during the remaining bond term and the sufficiency of reserve funds and operating income.
- L4. Owner or Property Administrator agrees to fund an independent consultant approved by the City to prepare the capital improvement assessment and agrees to adjust reserve funds to cover revised capital costs for the project, if necessary.

## **TRANSPARENCY AND OVERSIGHT**

**GOAL M: CITY ENFORCEMENT AUTHORITY**

**City will have enforcement authority over management of the project to ensure compliance with goals and performance measures during the bond or agreement period.**

*Performance Measures:*

- M1. Public Benefit Agreement or Regulatory Agreement cites the City's authority and remedies to enforce compliance with the housing affordability requirements.

M2. Public Benefit Agreement or Regulatory Agreement defines the City's enforcement abilities, remedies, consequences, and resolution process if, upon review of annual certification and reports, project operations or responsible parties are found to be out of compliance with agreements.

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**GOAL N: MONITORING AND REPORTING**

**City will be provided with regular reports regarding the financial and operational performance of the project during the bond or agreement period for project monitoring.**

*Performance Measures:*

- N1. Certification: Owner or Property Administrator agrees to submit to the City an annual Certificate of Continuing Program Compliance for the project.
- N2. Property Financial, Management, and Maintenance Reports: Owner or Property Administrator agrees to submit an annual report to the City that describes the project operations and finances, including but not limited to:
  - a. Rent roll and rent increases;
  - b. Vacancy rate;
  - c. Operating income and expenses;
  - d. Cashflow projection, operating funds, and reserves;
  - e. Bond interest and redemption payments and all bond specific payments;
  - f. Completed and planned capital improvements and replacements; and
  - g. Documentation on the general condition of the Project.
- N3. Independent Review: City reserves the right to require the property owner to fund an independent property and/or financial management consultant to review the reports required under N2 and provide an assessment of the project based on industry standards and best practices for management of residential property.
- N4. Monitoring Fee: Owner or Project Administrator agrees to submit to City an annual monitoring fee to cover City staff costs for project oversight and monitoring, with provision for an annual fee increase.

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**GOAL O: PROJECT ADMINISTRATION AND MANAGEMENT**

**Project proponent demonstrates to the City that the project will comply with best real estate practices for management of residential property.**

*Performance Measures:*

- O1. Owner or Property Administrator agrees to submit the following plans for City review and approval prior to execution of PBA: Tenant Selection Plan, with screening and qualification procedures; Local Preference Policy (per Goal D); Maintenance Plan; Property Management Plan, including staffing; and Marketing Plan.
- O2. City will have the authority to review and approve the selection of any replacement Property Administrator or Property Manager that may be proposed during the bond period, including new or revised agreements pertaining to the replacement company.

**ATTACHMENT 2**  
**Eleanor Apartments CSCDA Proposal**  
**Project Proponent: Opportunity Housing Group**  
**COMPLIANCE WITH COUNCIL-ADOPTED GOALS AND PERFORMANCE MEASURES**

15-Apr-22

**COMPLIANCE SUMMARY:**

GOALS (15): YES - 2, NO - 2 , Partial or Pending - 11

PERFORMANCE MEASURES (41): YES - 10, NO - 25 , Partial or Pending - 6

**COMPLIANCE ITEMIZED LIST:**

Color Coding: YES (Green), NO (Red), Partial or Pending (White)

Goal	Performance Measure	Comply?		Comments
		AFFORDABILITY CONSIDERATIONS		
<b>A. AFFORDABILITY LEVEL</b>	A1. Housing units below market-rate and affordable to Moderate-Income Households per HCD standards for Santa Clara County. Units for Low Income Households encouraged.	<b>No</b>		Based on CSCDA maximum rents and assuming same rent levels as Turing Project, 40% of units would not be affordable to Moderate-Income Households and no units would be affordable to Low-Income Households per HCD standards.
	A2. Rents based on Moderate Income Households paying maximum 30% of gross household income for housing costs (rent and utilities).	<b>No</b>		Rents based on 30% of gross household income, but utility expenses are not included in calculating maximum rents per HUD standards.
<b>B. RENT INCREASES</b>	B1. Annual rent increases will not exceed 4% or the annual allowable percentage rent increase established by HUD, whichever is lower.	<b>Yes</b>		Regulatory Agreement includes this provision.
	B2. Owner agrees to submit proposed rent increases for City review and approval.	<b>Yes</b>		City approval required for any amendments to affordability covenant in Regulatory Agreement per PBA.
	B3. Owner agrees to submit an annual report to City certifying compliance with affordability covenants.	<b>Yes</b>		Annual compliance certification is required per PBA.
<b>C. EXISTING TENANTS</b>	C1. Non-Qualified Tenants (exceeding 120% AMI) allowed to remain in unit paying market rents.	<b>Yes</b>		Non-Qualified Tenants (exceeding 120% AMI) allowed to stay in their units per Regulatory Agreement.
	C2. Qualified Tenants (120% AMI or below) will benefit from a minimum 10% rent reduction.	<b>No</b>		No guaranteed rent reduction for qualified existing tenants.

Goal	Performance Measure	Comply?	Comments
<b>D. LOCAL PREFERENCE POLICY</b>	D1. Owner will administer a tenant preference program.	No	Not currently verified or included on PBA
	D2. Preference to teachers and staff employed in public education institutions in Milpitas.	No	Not currently verified or included in PBA
<b>E. RHNA CREDIT</b>	E1. Project qualifies for full or partial RHNA credit, if feasible.	No	Project does not qualify for partial RHNA credit.
<b>FINANCIAL CONSIDERATIONS</b>			
<b>F. QUALIFICATIONS OF PROJECT TEAM</b>	F1: Project Administrator demonstrates extensive development, management and financial experience.	Pending	Project Administrator not identified yet.
	F2. Property Manager demonstrates extensive residential management experience, including affordable housing and preference programs.	Pending	Property Manager not identified yet.
<b>G. CITY EVALUATION OF PROPOSALS</b>	G1. Project proponent deposits funds for consultants to analyze proposal.	Pending	Submittal of deposit pending.
<b>H. CITY REVENUES</b>	H1. Project backfills City property tax and PTILVLF through annual Host Fee based on post-sale assessed valuation.	No	Project will backfill Milpitas's share of property taxes and PTILVLF, but based on pre-sale assessed valuation.
	H2. Host Fee is guaranteed and in a senior lien position.	Yes	Host Fee will be paid before administrator fees and principal and interest per PBA.
	H3. Property taxes for non-residential portion of the property will continue to be paid.	Pending	Confirm that retail portion will not be included in CSCDA property transfer.
	H4. Annual Infrastructure Fee will be paid equivalent to City CFD 2008-1 special tax.	Yes	Special tax will be paid, and will continue to be paid if property found to be exempt from tax per PBA.
<b>I. PROJECT FINANCIAL VIABILITY</b>	I1. Income/expense assumptions conservatively reflect historical trends for residential projects in Milpitas or Santa Clara County.	No	Project has not yet submitted cash flow analysis with income/expense assumptions to verify performance measure.
	I2. Project demonstrates a minimum 1.0 Debt Coverage Ratio (DCR) with rental income based on Affordability Goals A and B.	No	Project has not yet demonstrated minimum 1:1 DCR and ability to cover debt and expenses with operating income.

Goal	Performance Measure	Comply?	Comments
	I3. Ability to make amortized principal and interest bond payments.	No	Project has not yet demonstrated ability to make amortized principal and interest bond payments.
J. CITY FINANCIAL RISK/BOND STRUCTURE	J1. Minimum 25% of principal paid within 10 years and bond term cannot exceed 35 years,	No	CSCDA bonds are "turbo" bonds with no guarantee of principal payment; limited payment of principal in first 15 years based on projected cashflow.
	J2. Bonds optionally redeemable within 10 years of issuance with call premium consistent with investment grade bonds.	No	Provision not included in PBA.
	J3. Bond principal redemption mandatory and in same lien position as bond interest payments.	No	Provision not included in PBA.
	J4. Administrator fee paid after bond principal and interest, bond reserve deposits, and only from excess cashflow.	No	Provision not included in PBA.
	J5. Bond issuance fees and expenses in line with similar middle income housing programs in California.	No	If similar to Turing project, fees to project sponsors significantly exceed underwriting standards for similar municipal bonds.
	J6. Bond issuer will notify City of any material changes to project financials during bond term.	No	Provision not included in PBA.
	J7. PBA includes indemnification clause to limit City's liability and exposure.	No	Limitation on liability section included in PBA, but indemnification provision not included.
	J8. City will be entitled to 100% of the property's reversion value at the end of the bond term.	Yes	City not obligated to share proceeds with other taxing entities per PBA.
K. DEBT REFINANCING	K1. PBA includes City approval authority for debt refinancing or restructuring.	Yes	City approval of any refinancing with stipulated exceptions (e.g. to fund improvements) per PBA.
<b>LEVEL OF CAPITAL INVESTMENT</b>			
L. CAPITAL IMPROVEMENTS	L1. Capital improvement needs and costs are determined for entire bond period.	No	Project has not verified this yet.
	L2. Capital improvement needs and costs covered by project reserves and operating income during entire bond period.	No	Uncertain that reserve funds for capital improvements will be adequately funded during full bond term.

Goal	Performance Measure	Comply?	Comments
	L3. Capital improvement assessment prepared at least every five years.	Yes	Provision included in PBA.
	L4. Independent consultant to prepare Capital Needs Assessment and reserve funds to be adjusted, if necessary.	No	Provision not included in PBA.
<b>TRANSPARENCY AND OVERSIGHT</b>			
<b>M. CITY ENFORCEMENT AUTHORITY</b>	M1. City authority with remedies to enforce compliance with the affordability requirements.	No	PBA does not include City enforcement authority and remedies for non-compliance with affordability covenants.
	M2. City enforcement abilities, remedies, and consequences if project out of compliance.	No	PBA does not include City enforcement authority and remedies for non-compliance with PBA and Regulatory Agreement.
<b>N. MONITORING AND REPORTING</b>	N1. Owner submits annual Certificate of Continuing Program Compliance.	Yes	Provision included in PBA.
	N2. Owner submits annual Property Financial, Management, and Maintenance Reports.	Partial	Partially addressed in PBA
	N3. City reserves the right to require independent consultant to review annual monitoring reports.	No	Provision not included in PBA.
	N4. Owner agrees to submit annual monitoring fee to cover City oversight and monitoring costs.	No	PBA does not require payment of annual City Monitoring Fee.
<b>O. PROJECT ADMINISTRATION AND MANAGEMENT</b>	O1. Owner agrees to submit management and maintenance plans.	No	Provision not included in PBA.
	O2. City authority to approve any replacement Project Administrator or Property Manager.	Partial	City allowed to comment on change of Property Manager per PBA, but no approval authority for change of Property Manager or Project Administrator.