CITY OF CUPERTINO

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CITY COUNCIL STAFF REPORT

Meeting: November 18, 2025

Subject

Consider the potential sale of and appoint a negotiator for City-owned property along Mary Avenue (APN: 326-27-053)("Property").

Recommended Action

Appoint the Interim City Attorney and Interim City Manager to negotiate with the nonprofit public benefit corporations Cupertino Rotary Housing Corporation, Housing Choices Coalition for Persons with Developmental Disabilities, Inc., and Charities Housing Development Corporation of Santa Clara County (collectively, the "Developer") regarding the possible sale and development of the Property on terms established by the City Council.

Background

Since Fiscal Year (FY) 2020-21, the City Work Program prioritized engaging with philanthropic organizations to develop extremely low-income housing (ELI) for the intellectually and developmentally disabled (IDD) community. The FY 2021-22 City Work Program narrowed down this item to excess City-owned property within the Mary Avenue right-of-way. On February 6, 2024, the City Council approved an Exclusive Negotiation Agreement ("ENA") that was subsequently signed on April 9, 2024, to negotiate with the Developer the terms of a ground lease and development agreement in connection with the Property. See Attachment A.

The Developer's proposal envisions a 100% affordable, 40-unit, two-story, apartment development ("Project"). The individual apartments will be a mix of studio, one-, and two-bedroom units with one three-bedroom staff unit. The proposal is structured as a Special Needs project which requires a minimum of 45% (18 units) to be reserved for a special needs population, in this case, IDD. The remaining 21 apartments will serve extremely low and very low-income residents of the community. The affordability levels of the proposed units will range from 30% to 60% of the Area Median Income (AMI). The exact affordability mix by unit type is still to be determined.

Reasons for Recommendation and Available Options

Although the ENA originally contemplated a long-term ground lease to support the Project, further legal and risk analysis determined that a ground lease structure would expose the City to substantially greater ongoing responsibilities and potential liabilities than a sale structure. Specifically, retaining fee ownership under a ground lease could subject the City to continuing environmental and premises-related obligations, exposure to property damage or operational issues, and potential financial or legal implications in the event of a developer default. While contractual provisions could mitigate some of these risks, they would not fully eliminate the City's long-term exposure.

In addition, the ground lease structure could impose term limitations that may prevent the continuation of affordability restrictions beyond a certain point, which could result in fair market rents for the units in 50 years and reduce the long-term affordability benefit of the Project.

To reduce these risks while continuing to advance the City's affordable housing objectives, staff recommends proceeding with a sale structure instead of a ground lease. The sale is anticipated to be for a nominal amount to preserve the Project's financial feasibility. The City would retain the ability to negotiate a right to reacquire the property at a reasonable cost at the conclusion of the affordability term or other defined event, ensuring the City's long-term interests are protected. Appointment of negotiators at this time does not commit the City to a final transaction or disposition structure. Any proposed sale and related agreements will be brought forward for City Council consideration at a later public meeting.

<u>Next Steps</u>:

Should Council direct staff to proceed with exploring a sale of the Property, the following due diligence items will need to be prepared prior to a discussion in Closed Session:

i. Obtain an updated Title Report; and
ii. Evaluate whether the sale structure introduces new legal or procedural obligations in order to effectuate the sale.

<u>Sustainability Impact</u>
No sustainability impact.

<u>Fiscal Impact</u>
Appointment of negotiators will result in the use of City staff, and City Attorney time including time used by Aleshire & Wynder, LLP, which funds have been budgeted in the BMR Housing Fund 265-72-71 750-052.

<u>City Work Program (CWP) Item/Description</u>
Yes, FY 2025-2027

Preserve Existing and Develop New BMR/ELI Housing: Explore opportunities to preserve existing and expiring BMR housing. Develop ELI (Extremely Low Income) and BMR housing units for Developmentally Disabled individuals (IDD) on City-owned property as well as the County-owned sites.

Council Goal:
Housing

California Environmental Quality Act
No California Environmental Quality Act impact at this time.

Prepared by: Floy Andrews, Interim City Attorney
Reviewed by: Kirsten Squarcia, Interim Deputy City Manager and City Clerk
Approved for Submission by: Tina Kapoor, Interim City Manager

Attachments:
A – Exclusive Negotiation Agreement