JOINT SPECIAL MEETING OF THE MILPITAS CITY COUNCIL AND HOUSING AUTHORITY

For assistance in the following languages, you may call:

Đối với Việt Nam, gọi 408-586-3122	对中国人来说，请用 408-586-3263
Para sa Tagalog, tumawag sa 408-586-3051	Para español, llame 408-586-3232

AGENDA

TUESDAY, JUNE 12, 2018
MILPITAS CITY HALL – COUNCIL CHAMBERS
455 EAST CALAVERAS BOULEVARD, MILPITAS, CA
5:30 P.M.

SUMMARY OF CONTENTS

I. **CALL JOINT MEETING TO ORDER by Mayor and ROLL CALL by City Clerk**

II. **ADJOURN TO CLOSED SESSION** (5:30 PM)

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to California Government Code Section 54956.9(d)(1)
Tom Williams v. City of Milpitas, et al. - American Arbitration Case No. 01-17-0003-5823

III. **CLOSED SESSION ANNOUNCEMENT**

IV. **PLEDGE OF ALLEGIANCE**

V. **PUBLIC FORUM**

Those in the audience are invited to address City Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit spoken remarks to three minutes. As an item not listed on the agenda, no response is required from City staff or the Council and no action can be taken. Council may instruct the City Manager to place the item on a future meeting agenda.

VI. **ANNOUNCEMENTS**

VII. **ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS**

VIII. **APPROVAL OF AGENDA**

IX. **PUBLIC HEARING**

1. **Conduct a Public Hearing and Adopt a Resolution Approving Site Development Permit, Density Bonus and Environmental Assessment for the Residential Development Project at 355 Sango Court (Staff Contact: Lillian Hua, 408-586-3073)**

X. RESOLUTIONS

2. **HOUSING AUTHORITY**
   Adopt a Resolution Authorizing the Executive Director to Prepare and Execute Loan Documents to Restructure its Existing $3,000,000 Loan with Milpitas Housing Associates and Related Actions for the MonteVista Apartments at 1001 S. Main St. (Staff Contacts: Tim Wong, 408-586-3286 and Hang Huynh, 408-586-3275)

3. **HOUSING AUTHORITY**
   Adopt a Resolution Authorizing the Executive Director to Execute Documents for the Sale of Residential Unit at 340 Celebration Drive for the Amount of $210,000 (Staff Contact: Tim Wong, 408-586-3286 and Christopher Diaz, 408-586-3041)

XI. ORDINANCE

4. **Consider Introduction of Ordinance No. 297 to Amend Title 1, Chapter 1, Section 4.02 and to Add Title XII of the Milpitas Municipal Code relating to Affordable Housing and Direct Staff to Prepare a City Council Resolution for Adoption of Fees for Residential Ownership Developments, Residential Rental Developments and Non-Residential Developments (Staff Contact: Tim Wong, 408-586-3286)**

XII. ADJOURN JOINT MEETING

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.
Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.
For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website. All City Council agendas and related materials can be viewed online here: www.ci.milpitas.ca.gov/government/council/agenda_minutes.asp (select meeting date)

APPLY TO SERVE ON A CITY COMMISSION

Commission application forms are available online at www.ci.milpitas.ca.gov or at Milpitas City Hall.
Contact the City Clerk's office at 408-586-3003 for more information.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, please call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in the City Council Chambers for all meetings.

<u>**AGENDA REPORTS**</u>

IX. PUBLIC HEARING

1. Conduct a Public Hearing and Adopt a Resolution Approving Site Development Permit, Density Bonus and Environmental Assessment for the Residential Development Project at 355 Sango Court (Staff Contact: Lillian Hua, 408-586-3073)

<u>**Background:**</u> On May 23, 2018, the Planning Commission held a Public Hearing on the proposed development of a 1.26 gross acre property in the Transit Area Specific Plan (TASP). The project area is located on the northwest side of Sango Court in the Trade Zone/Montague Sub District. The project includes the construction of 100-102 affordable rental units and the construction of a 10 foot wide public trail along Penitencia Creek within a 16 foot dedicated recreational easement. The project also includes 0.24 acres of private open space and landscaping as amenities for the residents.

Per adopted Resolution 18-009, the Planning Commission voted 5-1 to recommend City Council approve the Site Development Permit, Density Bonus, and Environmental Assessment for the requested development. Commissioner Morris voted against the recommendation and requested the project include an Uber/Lyft loading zone and a local preference to the conditions of approval of the project. Staff is working with the applicant to incorporate these features.

Prior to the Planning Commission hearing, the project applicant demonstrated that the site's existing storm drain has sufficient capacity to accommodate drainage from the project, and therefore, the original requested concession for the upsizing of the stormwater line was not necessary. Following the Planning Commission public hearing, the applicant submitted a revised Density Bonus Request with a new concession request for an exemption from TASP fees. Staff recommends the Council support this additional concession request.

<u>**Environmental:**</u> The Planning Division conducted an initial environmental assessment (P-EA18-0001) of the project in accordance with the California Environmental Quality Act (CEQA). The Addendum fully addressed all potential impacts associated with this project, and no material changes have been made to the project that would alter the conclusions of the Addendum. The analysis contained in the Environmental Checklist confirms that the modified project is within the scope of the TASP FEIR and will have no new or more severe significant effects and no new mitigation measures are required.

Additionally, the TASP EIR included a program of activities including construction of up to 7,109 residential units within the TASP area. The 100-102 residential units proposed as a part of the Site Development Permit for the 355 Sango Court site fall within this scope of development activity, as the TASP area has not reached its full build out.

Pursuant to Sections 15162 and 15163 of the California Environmental Quality Act, the project is exempt from further environmental analysis. Project design features required of projects covered under the TASP EIR are included as Conditions of Approval, attached hereto as Exhibit I. Based on the foregoing, the project will not have additional environmental impacts beyond those identified in the TASP EIR, no additional environmental review is required, and no new or additional mitigation measures are required.

As a separate and independent basis, the project is also exempt from further CEQA review pursuant to Sections 15183, 15182, and 15169 of the California Environmental Quality Act, as the project is generally consistent with the development density established by existing zoning, specific plan, and general plan and is within the scope of the TASP FEIR. Therefore, no further environmental review is required.

Fiscal Impact: The project will have a fiscal impact on the City, as the applicant is requesting a concession on the reconstruction of Sango Court, TASP fees, and requesting a Public Art Fee Exclusion. The project has applied for a predevelopment loan with the City, as well as affordable housing funds from the County of Santa Clara. The project applicant will be asking the City for a $4 to $6 million loan at a later date. Detailed analysis on the costs savings for the reconstruction of Sango Court and the Public Art Fee Exclusion are found in the Planning Commission Staff Report.

Recommendations:
1. Open the public hearing, take public comment, and move to close the public hearing following all speakers.
2. Adopt a resolution approving the Site Development Permit, Density Bonus, and Environmental Assessment for residential development project at 355 Sango Court.

Attachments:
a) Resolution including 2 Exhibits (Conditions + CEQA Addendum)
b) Planning Commission Staff Report 05/23/2018
c) Adopted Planning Commission Resolution No. 18-009
d) Planning Commission Meeting Minutes 05/23/2018
e) TransForm GreenTRIP Certification 09/13/2017
f) Density Bonus Request
g) Public Art Fee Waiver Request
h) Project Plans

X. RESOLUTIONS

2. HOUSING AUTHORITY
Adopt a Resolution Authorizing the Executive Director to Prepare and Execute Loan Documents to Restructure its Existing $3,000,000 Loan with Milpitas Housing Associates and Related Actions for the Montevista Apartments at 1001 S. Main St. (Staff Contacts: Tim Wong, 408-586-3286 and Hang Huynh, 408-586-3275)

Background: Milpitas Housing Associates (MHA), a California Limited Partnership, is an entity formed by Bridge Housing Corporation (Bridge Housing). Bridge Housing is a non-profit housing developer and property management organization that creates high-quality, affordable housing for working families and seniors throughout the Bay Area. Their portfolio includes multi-family, senior, supportive and assisted housing, totaling over 16,000 homes. Bridge Housing has one development in Milpitas, the Montevista Apartments, which contains one, two and three bedroom affordable and market rate units on the property. Bridge Housing formed the Milpitas Housing Associates, specifically for the development of the Montevista Apartments.

In 1996, the former Redevelopment Agency (RDA) of the City of Milpitas entered into an agreement with Bridge Housing to build 306 units on the 16-acre property. The property, located at 1001 S. Main Street, includes 76 low-income (60% of AMI) units, and 87 very-low (50% of AMI) income units for a total of 163 restricted units. The affordable units are restricted for 55 years. The remaining 143 units are market rate apartment rental units.

Senior and Junior loans and lien position
The Montevista Apartments project cost over $32,000,000 to develop. As a non-profit housing developer, Bridge Housing needed to use various funding sources to finance the project. Because multiple loans are used, they all must be assigned “positions” on the property in the event of default or if the property is sold. The higher or senior the loan position dictates which loans get paid first. Given that there are multiple funding sources for the project, lien positions are required. Any loan that is after the senior loan (or loan in first position) is considered a junior loan. Junior loans are generally of lesser amount to the senior

loan. By having a lower lien position, the junior loan acknowledges its lower position in reclaiming payment.

Loans are secured by the legal right to the property through a deed of trust. The deed of trust is a legal document that is recorded against the property. This provides security to the lender (the City, County and CalHFA) by having a stake in the property.

Project Financing

In addition to the City's RDA loan, the Montevista Apartments received funding from several other agencies. The project received a loan from the California Housing Finance Agency (CalHFA) in the amount of $25,219,787. Santa Clara County funded the project with three separate loans: a $4,410,571 County local funds loan, a $443,448 HOME funds loan and a $260,520 CDBG loan. The loan in senior position is the CalHFA loan, which provided a majority of the funding for the project. In addition, the project received equity through the federal Low-Income Housing Tax Credit (LIHTC) Program. Please note that the tax credits provided equity (cash) in the project and is not a loan. Along with the City, the County is also a junior loan on the project and subordinate to CalHFA. Please see the table below in the City Loan Subordination section that shows the current lien positions.

With the dissolution of the City's RDA in 2012, the City of Milpitas Housing Authority became the successor agency to the RDA's housing assets. If approved, the revised loan will be processed as a loan with the City of Milpitas Housing Authority.

Housing Authority Loan Structure

The City's RDA provided a $3,000,000, 5.45% residual receipts loan to the project. Since $3,000,000 is a lesser amount than the other loans, the RDA agreed that its loan would be in a junior lien position. In event there is a new senior loan, a subordination agreement may be requested each time.

While the City RDA extended a loan for the project for this affordable housing project, the loan was structured to be paid out of the cash flow or "residual receipts" from the project. This is a customary structure for public agencies that provide loans to assist in the development of affordable housing. Because the affordable housing project has limited cash flow, the ability for the project to pay back the loan is actually quite low.

Tax Credit Program and Proposed Buyout

The LIHTC program is an indirect federal subsidy program through the Internal Revenue Service to help finance low-income, multi-family affordable rental housing construction or rehabilitation through the involvement of the private sector. The program to incentivize private developers and investors through a reduction in their federal tax liability in exchange for investing on affordable housing development. The private party or investors will receive a dollar-for-dollar reduction to their tax liability for their equity contribution to an affordable housing project. The investors are a partial owner of the project through the form of a limited partner – taking about .01-1% of the liability, and the developer or in this case, Bridge Housing, will be general partner, which is responsible for 99-99.9% of the liability. There is an Internal Revenue Service (IRS) compliance period of 15 years in which tax credits are subject to recapture if occupancy and rent restrictions are not observed. There is an overall rental affordability period of 55 years for the units. For Montevista, the IRS requires the development to meet occupancy and rent restrictions of at least 40% of the units be occupied by households whose income is at or below 60% of AMI as determined by the California Department of Housing and Community Development.

Now that the 15 year tax compliance period has expired and the property is no longer at risk for tax credit recapture, the limited partners or private investors wish to end their ownership role as the limited partners. In addition, as the general partner, Bridge Housing must reevaluate their relationship with the limited partners.

Bridge Housing has decided to dissolve its partnership with its limited partners and own 100 percent of Montevista Apartments to maintain its mission of affordability. Given that the limited partner's financial interest may not always align with the mission of Bridge Housing, it is in the best interest to buy-out the limited partner to preserve the affordable housing. Bridge Housing has a June 2018 deadline to buy-out the limited partners and is seeking assistance from the City. In dissolving their partnership, Bridge Housing will need to buy-out their limited partners at an estimated cost of $7,433,589 as outlined in their partnership agreement.

<u>Refinance Proposal</u>
In addition to buying out their limited partner, all units are in need of rehabilitation. Therefore, Bridge Housing is proposing to restructure their existing debt to be able to remove some equity from the property and to request some revisions from existing lenders in order to increase cash flow to help pay for rehabilitation costs.

<u>City Loan Subordination</u>
The first step of the refinance proposal is to buy out the limited partner. A short term Community Development Finance Institution (CDFI) loan would be used to finance the buyout until the long term, permanent refinancing with CalHFA is complete. The terms of the CDFI loan would restructure the lien priority temporarily. In addition to the CDFI loan, Bridge Housing wishes to refinance the existing CalHFA loan. As part of the refinance, CalHFA would require that all other existing loans to be resubordinated to their new loan. Again, the lien priority is required as a means of which lender would get repaid first if a property were to be foreclosed. The short term proposed lien priority would be as follows:

Current Lien Priority	**June 2018-January 2019 Lien Priority (Short Term)**	**January 2019-onward Lien Priority (Long Term)**
1. $25,219,787 CalHFA 1st Mortgage	1. $25,219,787 CalHFA 1st Mortgage	1. $43,586,366 CalHFA 1st Mortgage
2. $4,410,571 Santa Clara County Loan	2. $7,433,589 CDFI Loan	2. 3,500,000 CalHFA Subordinate Loan
3. $3,000,000 City of Milpitas Loan	3. $4,410,571 Santa Clara County Loan	3. $4,410,571 Santa Clara County Loan
4. $443,448 Santa Clara County HOME Loan	4. $3,000,000 City of Milpitas Loan	4. $3,000,000 City of Milpitas Loan
5. $260,520 Santa Clara County CDBG Loan	5. $443,448 Santa Clara County HOME Loan	5. $443,448 Santa Clara County HOME Loan
	6. $260,520 Santa Clara County CDBG Loan	6. $260,520 Santa Clara County CDBG Loan
Total Amount of Loans: $33,334326	Total Amount of Loans: $40,767,915	Total Amount of Loans: $55,200,905

The property was recently appraised at a value of $51,400,000 by CalHFA.

<u>Loan Restructuring</u>
In addition to "buying-out" its limited partners, Bridge Housing would also restructure all its debt for Montevista in order to make this transfer, which includes the loan provided by the City of $3,000,000. This would enable Bridge Housing to take on new debt from CalHFA to help finance the rehabilitation of the aging property.

Interest Forgiveness

Bridge Housing is requesting that the existing $1,541,073.98 of compounded interest accrued, as of June 30, 2017, on the City's loan be forgiven. The next calculation will be done on June 30, 2018. By forgiving the interest, this will enable Bridge Housing to free up its cash flow to use it for current needs and foremost, enabling the exit of the limited partner, and also to have the ability to obtain new subordinate debt from CalHFA. They have made periodic payments per the agreement since June 1, 2000 as required by the RDA loan agreement.

Bridge Housing has made similar requests to the County of Santa Clara and CalHFA. Bridge Housing is requesting that the County forgive the accrued interest for its loans which totals $2,591,249. City staff has worked in concert with County staff during these negotiations. The County Board of Supervisors will consider this request, as recommended by staff, at their June 19, 2018 meeting.

For CalHFA, which provided over $25,000,000 for the project, Bridge will request to refinance this loan and request another subordinate loan for $3,500,000 to fund the rehabilitation of the project. Rehabilitation will cost more than $13,000,000 for Montevista Apartments. CalHFA is providing the majority of the funds or liability of for the project, thus CalHFA will require that the smaller loans be subordinate and lower in lien priority. The permanent loan lien priority is demonstrated in the chart above.

Interest Rate Revision

Also requested is revising the interest rate on the existing loan. The current loan has a 5.45% compounded interest rate, and the developer requests that the interest reflect the federal rate and structured to simple interest. Currently the federal rate is at 1.75%. A reduced interest will have more of the payment go to the outstanding principal amount versus the compounded interest. It will also enable the developer greater flexibility in its loan restructuring.

Revising and Foregoing of Residual Receipts Payments

Residual receipts are the amount of cash remaining after payment of the net operating expenses and debt service. If there are remaining funds after payment of all their expenses, including debt service, those excess funds, or residual receipts, are used to pay the principal and interest on the subordinate loans, including the Housing Authority's loan.

It is anticipated that after the proposed financial restructuring with CalHFA, there will be some anticipated residual receipt payments to the Housing Authority. Bridge Housing is proposing that the distribution of residual receipts be based on the new restructured financing amounts. If the financial CalHFA restructuring moves forward, since they would be loaning additional funds, they would receive a greater percentage of any future residual receipts. Therefore, the Housing Authority and County percentages of residual receipts would decrease slightly. Please note that these are anticipated payments. Only when there is excess cash flow would there be payment of residual receipts.

Bridge Housing is requesting that the Housing Authority forego its first ten years of residual receipts payments go to fund the rehabilitation of the apartments and the deferred developer fee. Payments to the Housing Authority would resume in 2027. In addition, Bridge Housing is requesting that the Housing Authority and County to restructure the share of their cash flow. The developer proposes to restructure the cash flow based on existing debt amounts. The Housing Authority still anticipates receiving the same approximate payment, $200,000 annually, with the restructured cash flow.

Additional 50 Low Income Units

In exchange to approving the request, Bridge Housing will designate an additional 50 unrestricted, market rate homes into 80% AMI restricted units, targeting the live-work population of Milpitas. The restricted, affordable units will be guaranteed and secured by a Regulatory Agreement by CalHFA and a Regulatory Agreement with the Housing Authority.

For the new restricted units, for example, a 1 bedroom cannot exceed 80% AMI rent limits, which is $1,383; for a 2 bedroom, $1,660, and for a 3 bedroom, it cannot exceed $1,917. Currently, as reported by Rent Jungle in February 2018, the average apartment rent for a one bedroom unit is $2,422 and for a 2 bedroom, $2,866.

Montevista Apartment's current market rate units are extremely competitive. For example, a one bedroom's current rent is $1,400. This is approximately 57% below the average market price in Milpitas. With the new restriction to 80% AMI, the units will be decreasing the rent further. The restriction will be added on and will not displace any current residents. Once one of these units become vacant, they would be rented to a household that meets the 80% AMI requirement.

If cash-flow cannot be freed up for the restructuring of debt and buy-out of the limited partners, the limited partners may choose to increase the rent of the 143 market rate units, forcing families to absorb the costs or move out because the rent is no longer affordable.

<u>RHNA requirement</u>
Although the restructuring of the loan would yield an additional 50 low income units into the City's affordable housing stock, the units cannot be applied towards the City 2015-2023 Regional Housing Needs Allocation (RHNA) requirement because it does not meet the State requirements. The state has stringent requirements to include existing housing units to meet RHNA requirements. However they may be eligible for future RHNA requirements. Staff will work with the state and Bridge Housing to try to have these additional 50 units "credited" towards the City's future RHNA requirements.

<u>Fiscal Impact</u>: The total valuation of the Housing Authority's investment in approving the request is approximately $4.7 million. This figure is calculated by: 1) Forgiveness of existing interest in the amount of $1,541,074; 2) the foregoing of 10 years of anticipated residual receipts payments of approximately $200,000 per year with a cumulative amount of $2.0 million; and 3) and by revising the interest rate from compounded 5.45% interest rate to 3.05% simple rate, the difference is interest accrued is approximately $700,000 over the ten year period.

<u>Recommendation</u>: Adopt a Housing Authority resolution to direct the Executive Director to prepare and execute the loan documents for the existing Montevista Loan to authorize a short term Subordination of the City Loan to a short term lender, LIIF Housing Preservation Fund, LLC; authorize subordination to the California Housing Finance Agency for the permanent loan; revise the existing interest rate; forgive accrued interest; restructure the Housing Authority's share of the project cash flow; and, forego the first ten years of anticipated residual receipts loan payments.

<u>Attachments</u>:
a) Resolution
b) Letter from Bridge Housing
c) Subordination and Intercreditor Agreement

3. <u>HOUSING AUTHORITY</u>
Adopt a Resolution Authorizing the Executive Director to Execute Documents for the Sale of Residential Unit at 340 Celebration Drive for the Amount of $210,000 (Staff Contact: Tim Wong, 408-586-3286 and Christopher Diaz, 408-586-3041)

<u>Background:</u> On June 16, 2009, the Redevelopment Agency of the City of Milpitas adopted Resolution No. RA 334 authorizing the purchase of five affordable housing units including the unit located at 340 Celebration Dr in the Parc Metro development. The Housing Authority purchased the unit when the HOA filed a lawsuit against the developer. With the HOA lawsuit, potential homebuyers could not find lenders who would lend to units in litigation. Therefore the Housing Authority purchased the units to preserve their affordability. After the purchase of 340 Celebration Dr., on November 1, 2009, the City executed a Residential Lease Agreement with Option to Purchase ('Lease Agreement") with the tenant ShaRon Lewis.

On April 17, 2018, the Housing Authority Commission met in closed session to discuss price and terms of payment. Direction was provided to the City's negotiator and this agenda item memorializes the outcome of those negotiations.

Residential Lease Agreement with Option to Purchase
Within the Lease Agreement, it included a Purchase Option in which the tenant was given the opportunity to purchase the unit with some key provisions within the Lease Agreement. The Lease Agreement is included as Attachment A. The provisions are as follows:

1. Option to Purchase Period – The period of the Purchase Option expired in December 2013. Per the Lease Agreement, the Purchase period was to expire 60 days of the settlement of the HOA lawsuit. The litigation was settled in October 2013. Although the period has expired, staff recommends the Housing Authority continue with the sale of the unit.
2. Purchase Price – In Section 21 of the Lease Agreement, it stipulates that the purchase price shall not exceed $250,000.
3. $25,000 City Loan – The Housing Authority agreed to provide a $25,000 loan towards the purchase of the unit.

Unit Purchase
Ms. Lewis has been diligently pursuing the purchase of the unit. Staff certified that she is income eligible to purchase the unit and is a first time homebuyers, which are two requirements in the City's Affordable Housing ownership program.

As part of the sale, the homebuyer will be required to sign the City's Resale Restriction Agreement and Option to Purchase and adhere to its owner-occupied requirement. The Resale Restriction will limit the appreciation in the unit and will give the City the purchase option on the unit if the unit falls into default. Staff will monitor the unit to ensure that the unit will be the primary residence of the occupant.

Fiscal Impact: Proceeds from the sale will be placed in the Housing Authority Fund.

Recommendation: Adopt a resolution authorizing the Executive Director of the Milpitas Housing Authority to execute documents for the sale of a residential property at 340 Celebration Drive for the amount of $210,000.

Attachment: Resolution

XI. ORDINANCE

4. Consider Introduction of Ordinance No. 297 to Amend Title 1, Chapter 1, Section 4.02 and to Add Title XII of the Milpitas Municipal Code Relating to Affordable Housing and Direct Staff to Prepare a City Council Resolution for Adoption of Fees for Residential Ownership Developments, Residential Rental Developments and Non-Residential Developments (Staff Contact: Tim Wong, 408-586-3286)

Background: The City is proposing to implement a new Affordable Housing Ordinance (AHO). As proposed, the AHO would require that for new residential construction of 10 units or more, the developer would need to set aside 10% of the units as "affordable." Residential developers of owner-occupied developments, with the approval of the City Council, may pay an in-lieu fee instead of providing units in the development while rental project development can either provide units on-site or pay an affordable housing fee. New non-residential development would be required to pay a fee on a per square foot basis. Any fee collected by the residential or non-residential development would be placed in an affordable housing fund to be used for future affordable housing projects. Other options are available for developers to fulfill their affordable housing requirement. The ordinance authorizes creation of the housing fee however the actual fees will be adopted in amounts established via separate City Council resolution.

Milpitas housing prices has seen a dramatic increase in the past few years. According to Trulia, housing prices have almost doubled in the past five years. The rental market has increased 40% over the same time span. However, the median household income in Santa Clara County has only increased by seven percent. This wide disparity between housing prices and wage increases has resulted in many Milpitas families not able to afford housing in the City. The proposed Affordable Housing Ordinance would help increase the affordable for low and moderate income households.

The City has an existing affordable housing program with a total of 1278 total units. 274 of the affordable units are ownership units and the remaining 974 units are rentals. Almost all of the units were created through funding from the now-defunct Redevelopment Agency. By law, the Redevelopment Agency was required to set aside 20% of the Agency funds for affordable housing. Most of the affordable units were built by the Redevelopment Agency funding. When redevelopment agencies were dissolved by the Governor in 2012, this removed a significant source of affordable housing funding for the City. Since 2012, no new affordable housing has been built in the City.

In June 2015, the City Council passed Resolution No. 8491 that required new residential developments of 5 units or more to provide 5% of the units as affordable to low or very low income households or the developer could pay a fee equal to 5% of the construction costs as determined by the Building Department. While some fees have been collected approved residential developments, no developer has chosen to provide affordable units in the development.

On January 31, 2018, the Milpitas City Council held a study session on Affordable Housing to discuss affordable housing issues. At that meeting, Council directed staff to prepare an Affordable Housing Ordinance to replace Resolution No. 8491 with more substantial requirements to facilitate affordable housing development.

Project Description: As mentioned, in the current housing market, there is a great need for affordable housing. Many Milpitas and area residents cannot afford a house in Milpitas today. The proposed ordinance would provide an opportunity to increase the affordable housing inventory in the City while providing developers greater clarity in meeting the affordable housing requirements.

<u>Affordable Housing</u>
Affordable housing is generally considered housing that is affordable to, and reserved for, lower-income households for a period of time. The U.S. Department of Housing and Urban Development (HUD) and the State of California Department of Housing and Community (HCD) have the same income categories that are identified as “affordable” for “lower income” households. These categories are generally defined as the following:

Moderate-Income: 81-120% Area Median Income
Low-Income: 51-80% Area Median Income
Very Low-Income: 31-50% Area Median Income
Extremely Low-Income: 0-30% Area Median Income

For reference, the Area Median Income for Santa Clara County is $113,300 for a family of four. HCD's income breakdown of all the income categories for Santa Clara County as adjusted by household size is as follows:

County	**Income Category**	**Number of Persons in Household**							
		1	**2**	**3**	**4**	**5**	**6**	**7**	**8**
Santa Clara Co.	Extremely Low	25100	28650	32250	35800	38700	41550	44000	47300
4-person	Very Low	41800	47800	53750	59700	64500	69300	74050	78850
Area Median Income	Low Income	59400	67900	76400	84900	91650	98450	105250	112050
$113,300	**Median Income**	79300	90650	101950	**113300**	122350	131450	140500	149550
	Moderate Income	95150	108750	122350	135950	146850	157700	168600	179450

Regional Housing Needs Allocation (RHNA)
The shortage of affordable housing has been problematic in California for many years. It is addressed at the state level through multiple measures. One such measure is the allocation, to each city around the state, of a certain number of housing units in varying income levels reflecting the anticipated housing need in that city during a given planning period. This is known as the Regional Housing Needs Allocation or RHNA. Each city, through development of its state-mandated general plan housing element, zoning and its other efforts is then responsible for making sites available to accommodate that RHNA number. For this planning period (2014-2022), the RHNA for Milpitas is 3,290 units, as divided into five income categories:

Income Category	Projected Need	Percent of Total	Units constructed (since 2015)
Extremely Low Income (0-30% AMI)	502*	15.25%	
Very Low Income (0-50% AMI)	502*	15.25%	
Low (51-80% AMI)	570	17.3%	
Moderate (81-120% AMI)	565	17.2%	
Above Moderate (>120% AMI)	1,151	35%	260
TOTAL	**3290**	**100%**	**260**

**'Extremely low income' is actually a subset of the 'Very Low Income' category, and may be computed as either the percentage of very low income households that qualify as extremely low, per U.S. Census figures, or by adopting the presumption that 50% of very low income households qualify as extremely low.*

Note that cities are not required to actually build the housing units that will meet these RHNA numbers. Rather, the City must use its land use authority to make sites available to accommodate these anticipated housing units by, among other things, setting densities for land throughout the City that would allow for the construction of housing units in these income categories. Given the relatively high price of land, lower densities are not generally understood to be amenable to affordable housing production. Instead, in order to provide for housing in the lower income categories, the state has declared that jurisdictions had to select sites with densities that were generally able to accommodate 20 units or more per acre. (The state has found that a minimum density of 20 units per acre is sufficient enough density to support affordable housing projects.) Therefore, in the current City Housing Element, sites with densities of 20 units or higher have been identified as appropriate to host affordable housing. For future Housing Elements, the minimum density may increase in future cycles.

The RHNA is not the only gauge of success in determining whether a city has met its affordable housing needs, but it is a statewide metric for which the City is accountable. Thus, Goal A in the City's 2015-2023 Housing Element states: "Provide Adequate Sites. Maintain adequate sites to accommodate the City's share of the regional housing need, including sites that are appropriate for the development of housing affordable to very low-, low-, moderate- and above moderate-income households."

Affordable Housing Tools: In addition to the implementation of the proposed Affordable Housing Ordinance, there are a number of other tools and resources that can be used to encourage affordable housing production. These include:

1. Federal Assistance.
    a. *Housing Choice Vouchers* – Also known as Section 8, housing choice vouchers are rental subsidies. The voucher holder pays a certain percentage of their income and the voucher is used to "fill the gap" between Voucher holder's payment and the market rate rental price of the unit. Vouchers are provided by HUD which provides either project-based vouchers or tenant-based vouchers. Project-based vouchers are provided for units of a specific development while a tenant-based voucher is used by individual households that choose their own housing units and then use their voucher to pay for their rent. There are a number of households with tenant based vouchers residing throughout the City. The City is not involved in either procuring or dispensing housing choice vouchers.

    b. *Community Development Block Grant (CDBG)* – The CDBG program is a federal program administered by the Department of Housing and Urban Development (HUD). The City receives approximately $450,000 per year through the CDBG program, and the funds can be used for a variety of community development activities. Typically, the CDBG process begins in January, and the Council approves CDBG funding recommendations in April.

2. County Assistance.
    a. *Measure A funding* – In November 2016, Santa Clara County voters passed Measure A, a $950 million affordable housing bond. $700 million is dedicated to the extremely-low income population, $100 million for low income and the remaining $150 million for moderate income households. One affordable housing project in Milpitas has submitted an application for Measure A funding. The City can seek additional Measure A funds for qualifying projects.

3. Other Possible Tools.
    a. *Density Bonus* – Under the State Density Bonus law (Government Code § 65915, et seq.) developers are entitled to additional density in exchange for qualifying percentages of affordable (or otherwise eligible) units being constructed in the development. The law also requires cities to provide "concessions," "incentives," and "waivers," in certain circumstances, which provide some regulatory relief from the zoning requirements. If a development qualifies for a density bonus, the law requires it to be provided, up to a maximum of 35% increased density. However, cities have the option of approving even greater density bonuses (and authorizing additional concessions, incentives, or waivers) if they chose to do so.

Affordable Housing Impact Nexus Study
In December 2016, Keyser Marston Associates, a third-party consultant well-versed in nexus studies on affordable housing impact fees, delivered its Affordable Housing Impact Fee nexus

study to the City. As detailed above, the study evaluates the nexus between new housing and commercial developments and the impacts these developments have on the demand for affordable housing. The nexus study provides a financial analysis to determine the maximum fee that could be collected to help address the resulting affordable housing demand.

The final draft of the nexus study was released for public review on November 3, 2017, for a 30 day review. Copies were provided at City Hall and at the Library, with electronic versions available on the City website. City staff conducted a number of community meetings with the public to present the findings of the nexus study and to solicit input about City affordable housing issues. Notices of the community meetings were sent out via Next Door, Facebook and via email. In addition, City staff met with the Building Industry Association (BIA) the Commercial Real Estate Development Association (known as NAIOP) to receive their comments about the Nexus Study.

The nexus study studied the impacts of both residential and commercial development on affordable housing. Through its analysis, it determined a maximum impact fee for a number of residential and commercial types of development. The consultant, Keyser Marston and Associates, using an employment generator model, determined how many lower wage jobs would be generated by the new development types. Based on the new employee creation, the demand for affordable housing can be determined. Multiplied by the construction costs for certain housing types, the overall costs for the affordable housing demand can be calculated. Fees can be adopted on a per unit or per square footage basis.

Maximum fees that can currently be supported for residential and commercial development in Milpitas, according to the nexus study, are listed. The fees listed are the maximum fee as determined by the nexus study. The Council is not obligated to approve any fee, let alone a fee at the maximum level.

Table 1
Maximum Supported Residential Impact Fees

	Ownership Units			**Rental Units**	
	Single Family Development	Townhome	Condominium	Apartment (Low Density)	Apartment (High Density)
Per Market Rate Unit	$69,900	$52,700	$39,400	$35,000	$40,800
Per Square Foot	$30.50	$53.00	$43.80	$31.90	$45.40

In addition, the study also analyzed the impacts of new commercial development and the demand for affordable housing generated by the new development. The study analyzed five different types of commercial development. Adoption of commercial impact fee can be done in conjunction with a residential impact fee, in the absence of a residential impact fee, or not at all, as Council pleases. As with maximum supported residential impact fees, figures listed in Table 2 below are maximum supportable fees, not suggested figures for final adoption.

Table 2
Maximum Supported Commercial Impact Fees

	Office	**Retail**	**Hotel**	**Light Industrial**	**Warehouse**
Per Square Foot	$142.70	$268.00	$128.70	$149.60	$47.80

As a reference, this table shows the commercial impact fees collected by other nearby jurisdictions.

Table 3
Commercial Impact Fees in Nearby Cities (Per Square Foot)

City	Office	Retail	Hotel	Light Industrial
Santa Clara (effective 7/1/18)	$3.33 (<20,000 sq. ft.) $6.67 ≥ 20,000 sq. ft.)	No fee (<5,000 sq. ft.) $1.67 (≥ 5,000 sq. ft.)	$1.67	$1.67 (<20,000 sq. ft.) $3.33 (≥ 20,000 sq. ft.)
Mt. View	$25.00	$2.68	$2.68	$25.00
Cupertino	$20.00	$10.00	$10.00	$20.00
Palo Alto	$19.85	$19.85	$19.85	$19.85
Sunnyvale	$15.00	$7.50	$7.50	$15.00
Fremont	$4.00	$4.00	$4.00	$1.00
San Jose	N/A	N/A	N/A	N/A

Proposed Affordable Housing Ordinance

Based on the data provided by the Affordable Housing Nexus Study and given direction by the Council to proceed with an ordinance, staff began preparing the draft AHO. The draft AHO has been attached for reference. The following is a summary of the more relevant sections of the proposed Affordable Housing Ordinance.

Section 3: Residential Development General Requirements

The ordinance proposes that 10% of all new residential units developed be set aside as affordable units. The ordinance differentiates between ownership and rental developments. Depending on the tenure type, the units would target different income levels.

The developer would designate the affordable units during the entitlement process. Staff would review the designated units to ensure that the units are of like quality of the market rate units and that the unit distribution is consistent with the bedroom mix of entire development. Once the units are accepted, a Regulatory Agreement and deed restrictions would prepared and recorded against the property to ensure the long term affordability of the units. The deed restrictions would limit the resale price of the unit to ensure that the unit would be affordable to future lower income households. Generally the resale price is limited by an index such as the cost of living increase or the Consumer Price Index

Section 4: Exceptions to 10% Affordability Requirements

As an option, the development may also request to pay an in-lieu fee instead of providing the required affordable units. This in lieu fee request would need to be approved by the City Council. The in-lieu fee would be charged on a per square foot basis. The in lieu fee would be determined by separate resolution. The in-lieu fee would be adjusted annually based on the increase or decrease of the Engineering New Record McGraw-Hill Construction Weekly Building Cost Index for San Francisco.

The draft AHO would require that, if a request is made to the Council for the payment of in-lieu fees, the Council must make the following findings in order to approve the request. The findings are as follows:

1. The exception requested exceeds the minimum affordable requirements; and
2. The project is better served with the exception; or
3. The community benefits exceed the project benefits.

In accordance with AB 1505, an ordinance requiring inclusionary housing as a condition of residential rental development is required to provide an alternative means of compliance. As a result, developers of rental housing may opt to pay the in-lieu fee without prior Council approval. (*See* Government Code § 65850(g)) The Council could set a separate in-lieu fee for rental units.

Other options developers may utilize include providing units off-site, dedicating land and a square footage equivalent exchange. These options require Council approval.

Section 5: Non-Residential Development Impact Fees

Non-residential development does not provide housing units however it does still create the need for affordable housing. Therefore instead of providing units, non-residential developments would be required to pay an impact fee on a per square footage basis. Any fees collected would be used for future affordable housing developments. The fees would be conditioned be for very low and low income housing. Since it is shown that the impact would directly affect working class families, staff proposes that any fees from non-residential could not be used for affordable senior housing.

To encourage particular uses that are of benefit to the community, the ordinance exempts the following non-residential uses from the non-residential impact fee:

1. New commercial uses or existing commercial uses with net square footage increases of less than 5,000 sq. ft.
2. Daycare and nurseries
3. Hospitals

Section 6 General Requirements

These requirements apply to all affordable units regardless of tenure. The requirements of the AHO will apply to any entitlement application that has not been deemed complete as per Government Code 65943 by the effective date of the ordinance. These requirements include:

1. The affordable units must be of like make and quality as the market rate units
2. Affordable Units must be equal to market rate bedroom distribution
3. The ordinance applies to new residential development of 10 units or more.
4. If a fractional unit is required, e.g. a development is required to provide 2.25 units, the fractional units will be required to pay the in lieu fee.
5. A 45 year Resale Restriction is required for affordable ownership units and a 55 year restriction on affordable rental units
6. Requirements of the Affordable Ownership Units
    a. The City will retain a Purchase Option on the Ownership Units.
    b. The homebuyer must a First Time Homebuyer. A First Time Homebuyer is defined as not having owned property in the past 3 years.
    c. The units must be owner occupied and the primary residence of the homebuyer. The City will conduct monitoring to ensure that units are owner occupied by the purchaser.

Determination of Residential and Non-Residential Fees

As a point of clarification, the City is proposing to charge two types of fees, an impact fee for non-residential developments and an in lieu fee for residential ownership units and residential rental units. The impact fee, as determined by the Nexus Study, is the amount needed to mitigate the demand for affordable housing generated by the new development. Non-residential development does not develop residential units but still create an impact on affordable housing. Therefore an impact fee is charged. The in-lieu fee is a fee the developer would pay in-lieu of providing affordable units in the development. While the in-lieu fee is not an impact fee, the Nexus Study analysis provides the financial basis of substantiating the in-lieu fee.

The Affordable Housing Ordinance emphasizes the production of affordable units within the developments. However at times, payment of a fee in-lieu of providing the units is appropriate. For residential ownership developments, the developer would need to request to City Council for the option of paying a fee. Because of State law, developers of residential rental projects may pay the in-lieu fee without Council approval.

Residential Ownership In-Lieu Fee - $30 per square foot.
The Nexus Study analyzed three different ownership types in determining the appropriate impact fee. The maximum range of impact fees was from $30.50 per square foot for single family homes to $53.00 per square foot for townhome developments. Therefore, staff recommends the lower range of the fees or $30 per square foot for residential ownership development. Although the Nexus Study was prepared to determine the maximum affordable housing impact fee it is appropriate to use its findings in applying to an appropriate in-lieu fee.

Residential Rental In-Lieu Fee - $31 per square foot.
The Nexus Study analyzed two different rental types in determining the appropriate impact fee. The maximum impact fee ranged from $31.90 per square foot for low density apartment developments to $45.40 to high density apartment developments. Staff also recommends the lower range of the impact fees or $31 per square for residential rental fees.

Non-Residential Impact Fee - $4 per square foot.
Staff proposes that the City charge a Non-residential impact fee of $4 per square foot. This amount is based on comparisons with the City's adjacent neighbors. The City of Fremont charges a non-residential impact fee of $4 per square foot while the City of San Jose does not have a non-residential impact fee. The City of Santa Clara recently approved a non-residential impact fees which ranged from $1-$4 per square foot with gradual increases on an annual basis. While the City could charge a substantially higher amount as determined by the Nexus Study, in consideration of surrounding jurisdictions, staff recommends that the Non-residential Impact Fee be set at $4 per square foot.

PUBLIC COMMENT/OUTREACH
Staff did extensive public outreach in presenting the Affordable Housing Ordinance. Two community meetings, held on April 19, 2018 in Joseph Weller School and on April 26, 2018 at John Sinnott School, were well attended with about 35-40 attendees at each meeting. Flyers advertising the community meetings were circulated in English, Spanish, Vietnamese and Chinese. Flyers were distributed electronically via Nextdoor, Facebook, the City's email distribution list and posted in the Milpitas Post. Flyers were also displayed in public areas such as Starbucks, Marina Grocery store and other businesses throughout the City.

Staff presented the proposed Affordable Housing Ordinance to the Planning Commission on May 23, 2018. The Planning Commission was supportive of the AHO realizing the critical need of affordable housing in the City.

Fiscal Impact: Any fees collected would be placed in the Affordable Housing Ordinance Fund. Future fees would be used to finance affordable housing projects.

Environmental Review: The City Council finds and determines the adoption of this Ordinance is (1) not a Project under the California Environmental Quality Act (CEQA) and is therefore exempt , pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(4)4), that adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because it constitutes a governmental fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment; (2) statutorily exempt pursuant to CEQA Guidelines section 15267 (Financial Assistance to Low or Moderate Income Housing; (3) not intended to apply to specifically identified affordable housing projects and as such it is speculative to evaluate any such future project now and, moreover, they will be subject to appropriate environmental review at such time as approvals for those affordable housing project are considered; and/or (4) not intended to, nor does it, provide CEQA clearance for future development-related projects by mere establishment or payment of the fees. Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

Recommendations:
1. Following the City Attorney's reading of the title of Ordinance No. 297 regarding affordable housing, move to waive the first reading beyond the title.
2. Move to introduce Ordinance No. 297 to amend Title 1, Chapter 1, Section 4.02 and to add Title XII to the Milpitas Municipal Code.]
3. Direct staff to prepare a City Council resolution for adoption of these fees:
   - $30 per square foot in-lieu fee for Residential Ownership developments
   - $31 per square foot in lieu fee for Residential Rental developments
   - $ 4 per square foot impact fee for Non-Residential developments

XII. ADJOURN JOINT MEETING