Agenda Report

Fullerton City Council

MEETING DATE:	**OCTOBER 5, 2021**
TO:	**CITY COUNCIL / SUCCESSOR AGENCY**
SUBMITTED BY:	**STEVE DANLEY, ACTING CITY MANAGER**
PREPARED BY:	**GREG PFOST, INTERIM DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT** **KELLEE FRITZAL, DEPUTY DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT**
SUBJECT:	**MIDDLE INCOME / WORKFORCE HOUSING REQUEST FOR THE ASPECT APARTMENT PROJECT**

SUMMARY

Council Member Silva, supported by Council Member Zahra, requested that City Council consider a Middle Income / Workforce Housing project for those who earn between 80% to 120% of the Area Median Income (AMI). A development group and the California Statewide Communities Development Authority (CSCDA) present a project for Aspect Apartments located at 251 Orangefair Avenue for consideration.

RECOMMENDATION

City Council consider the Aspect Middle Income / Workforce Housing project and direct staff to either:

1. Not authorize the proposed request.
2. Authorize the request and:

   A. Adopt Resolution No. 2021-XX.

      RESOLUTION NO. 2021-XX – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING, AUTHORIZING, AND DIRECTING EXECUTION OF JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CSCDA COMMUNITY IMPROVEMENT AUTHORITY, AND THE FORM OF A PUBLIC BENEFIT AGREEMENT; AND APPROVING THE ISSUANCE OF REVENUE BONDS BY THE AUTHORITY FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, OR IMPROVEMENT OF THE ASPECT PROJECT;

B. Direct City Manager to enter into Public Benefit Agreements with the Agency, substantially in the form attached, which may result in the City receiving surplus revenue from future sale of the Project.

C. Direct City Manager to execute related documents and take any additional actions required to implement the Middle-Income Housing Program.

D. Determining that this action is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c)(2) and 15060(c)(3), because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a "project" pursuant to Section 15378(b)(5) of the State CEQA Guidelines.

Or

3. Continue this agenda item if City Council requires additional information before making a determination.

PRIORITY POLICY STATEMENT

This item matches the following Priority Policy Statement:

- Fiscal and Organizational Stability.

FISCAL IMPACT

There are several unknowns related to this proposed project at the present time that may impact the City financially.

If approved, the nature of the bond financing would prevent the City from collecting annual property tax from this property (estimated at approximately $215,000 in calendar year 2021) for the length of the bond (15 to 35 years). To offset this loss, CSCDA has proposed a “Host City” charge where the City would receive $275,000 in year one and which would escalate 2 percent annually through year 35. Financial consultant Keyser Marston Associates (KMA) has advised the City faces some risk in ensuring that the City receives this annual Host City payment. Pages 23 and 24 of their attached September 26, 2021 memo state that the City would only receive the annual Host City charge during years with sufficient cash flow (i.e., greater revenue than operating expenses).

Additionally, the KMA memo states CSCDA has not yet provided a proforma and rent analysis, an appraisal, Property Condition Report or purchase and sale agreement for the property. There are also additional unknowns as to acquisition and closing costs.

Although the City does not have oversight or monitoring rights with respect to the maintenance, building repairs or on-going capital upgrades, it is the most public face of the Joint Power Agreement that must be formed as a result of this project,. As such, the public could incorrectly assume the City is financially responsible and apply pressure for it to maintain the property.

Further, if the property reverts to the City at the end of the bond term, the City would assume the property in “as is” condition and may inherit deferred maintenance liabilities that the City may not be in a fiscal condition to address.

DISCUSSION

On August 17, 2021, City Council received a presentation from the CSCDA regarding the Workforce Housing Program. Councilmembers Silva and Zahra requested that staff agendize information regarding a specific project for a future City Council meeting. Subsequently, CSCDA submitted a specific project request for the Aspect Apartments, which is the subject of this report.

Background

The City encourages and supports a full range of housing options affordable to different income levels. Limited Federal, State or local subsidies or programs to produce or preserve the growing shortfall of below market rate rental housing for moderate and middle-income households currently exist. To date, affordable housing programs in California have focused almost exclusively on providing housing for low-income households which earn at or below 80 percent of area median income. State and federal funding sources almost exclusively target households at or below 60 percent of AMI. This has left a “missing middle,” comprised of households that earn too much to qualify for traditional affordable housing programs but not enough to afford market rate housing.

CSCDA

The CSCDA is a joint powers authority founded and sponsored by the League of California Cities (League) and the California State Association of Counties (CSAC). CSCDA was created by the League and CSAC in 1988 to enable local government and eligible private entities access to low-cost, tax-exempt financing for projects that provide a tangible public benefit, contribute to social and economic growth and improve the overall quality of life in local communities throughout California. More than 530 cities, counties and special districts comprise CSCDA including the City of Fullerton, which has been a member since 1992. CSCDA has issued more than $65 billion in financing through 1,600 plus transactions (typically bond issuance transactions) across its diverse public benefit financing programs. CSCDA helps local governments build community infrastructure, provide affordable housing, create jobs and make access available to quality healthcare.

The CSCDA, an affiliate joint powers authority, formed to enable CSCDA to continue to broaden its program offerings and acquire public benefit oriented capital projects through the issuance of tax-exempt governmental purpose bonds. Through the CSCDSA’s Workforce Housing Program, it issues government bonds to acquire market-rate apartment buildings. CSCSA then converts these properties to income and rent-restricted units for moderate / middle income households. Additionally, annual rent increases are capped at no more than 4 percent, which is less than the rent limits under AB1482, the recently adopted State tenant protection legislation. The program would not displace any existing tenants.

If the Authority acquires a property, the City would execute a Public Benefit Agreement. One provision of the Public Benefit Agreement states that the City, at its sole discretion, may direct the sale of the property between year 15 and year 35 (the end of the life) of the bonds and the City, along with certain other taxing agencies (including the County and School District), would receive a portion of the net sale proceeds.

The Authority is a public entity separate and apart from its members and any debts, liabilities and obligations incurred by the Authority will not constitute debts, liabilities or obligations of its member agencies (such as cities, counties and special districts). The Authority assumes sole indebtedness of bonds issued for any project, payable only from revenues of the project. Joining the Authority creates no financial expenditures, liabilities or obligations or executing any public benefit agreement.

The City discussed the possibility of enhancing the affordability levels in the project with CSCDA, such as the potential of making 20% of the units at 60% AMI rents or additional units at the lowest 80% AMI rate, such as 40% of the units. According to the CSCDA, due to the financing of the project, the project will need to be based on the 1/3 of each of the 80%, 100%, and 120% rents.

Aspect Apartments Project

Aspect Apartments, located at 251 Orangefair Avenue in Fullerton, was constructed in 2017 as a four-story building consisting of 323 units with a mix of studio, one- and two-bedroom units. The building is currently over 95% occupied at market-rate.

If the apartments are brought into the program, the current market-rate rents would be reduced with 1/3 or the units at 80%, 100% and 120% rents, as shown in the following table:

	Market Rents	**80% Rents**	Discount from Market Rent	Difference Between 80% - 100%	**100% Rents**	Discount from Market Rent	Difference Between 100% - 120%	**120% Rents**	Discount from Market Rent
Studio	$2,250	**$1,884**	16%	$111	**$1,995**	11%	$133	**$2,128**	5%
1-Bdrm	$2,500	**$2,152**	14%	$173	**$2,325**	7%	$25	**$2,350**	6%
2-Bdrm	$3,050	**$2,422**	21%	$353	**$2,775**	9%	$25	**$2,800**	8%

To better understand the proposal and its impacts upon the City, staff engaged financial consultant Keyser Marston Associates (KMA). KMA prodced the attached September 26, 2021 Memorandum which provides an overview of the program and an analysis of the specific Aspect Apartments request. Based on the Memorandum and research of various other cities with median income housing projects, the following discusses of some of the potential benefits and issues related to the Aspect project:

Potential Benefits:

- The City will obtain income restricted 80% - 120% affordability units for median income residents for at least 15 years and possibly longer.
- City receives a “Host City” fee of $275,000 in year one with annual increase of 2% that will offset the property tax loss on an annual basis, <u>provided that</u> the property’s revenue offsets operating expenses.
- In year 15 to 35, the City could direct a sale of the property that after re-payment of the bond and payments to the other taxing agencies, the City may receive net proceeds of approximately $88 million (according to CSCDA) that it can use at its own discretion. Alternatively, during this same time period, the City could purchase and own the property to ensure continued affordability. Importantly, staff and KMA are not entirely confident that the City would receive $88 million. For example, CSCDA

assumes that the revenue and expenses both increase at 3% per year. If market rate rents fall or even flatten, the project will pay interest only on the bonds which means the City will have less proceeds when the project sells.

- No direct financial risk to the City if the essential bonds are not repaid.

Potential Issues:

- The City will not receive Regional Housing Needs Allocation (RHNA) credit for moderate income housing in its Housing Element. While the Governor recently signed AB787, which does provide RHNA credit for these projects, the current legislation specifies requirements to meet before obtaining credit, one of which requires the units be rent restricted for 55 years. The proposed project will have a rent restriction period between 15 and 35 years, commensurate with the bond period and future sales of the property. However, if the City exercised its option to purchase the property sometime during years 15 - 35, as owner, it could extend the rental affordability period for a total of 55 years or longer.
- Higher purchase rate exceeding market value could impact real estate market. For example, if multiple transactions are carried out through the MIH Program, this could have the effect of inflating the local real estate market as sellers may seek higher than market-rate offers that are made possible by a prospective property tax exemption.
- Overpayment increases debt on property.
- Neither the City nor a third party provide affordability monitoring or oversight to ensure that units rent in the 80-120% range. The regulatory agreement restricts the units to the 80-120% range and requires income certification of the tenants. However, the regulatory agreement is between CSCDA and the Bond Trustee. The City is not a party to the agreement. Thus, the City will have to rely on the Bond Trustee to enforce the regulatory agreement to ensure that the rents remain restricted to the appropriate amounts.
- Joint Powers team collects high fees, which impacts ability for rent reduction. For example, if the upfront fees were reduced, the amount of bonds taken out for the project could also be reduced. This would result in lower required debt service payments. The additional cash flow freed up by reducing the debt service payments could be used to reduce rents further. Additionally, the Joint Powers team receives high fees on an annual basis. If these annual fees were lowered, there would be an ability to reduce the rents further than proposed.

A more detailed analysis of the potential benefits and issues in provided in pages 14-24 of the attached KMA Memo.

Attachments:

- Attachment 1 – Keyser Marston Memo dated September 26, 2021
- Attachment 2 – Aspect Project Details dated September 21, 2021
- Attachment 3 – Draft Resolution No. 2021-XX
- Attachment 4 – Draft Public Benefit Agreement