



AGENDA

CITY COUNCIL MEETING
Tuesday, February 2, 2016 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Gabriel Quinto

ROLL CALL

7:00 p.m. CONVENE CITY COUNCIL MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE – Councilmember Gabriel Quinto.

2. COUNCIL / STAFF COMMUNICATIONS (*Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.*)

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. PRESENTATIONS - None

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5A through 5F

A. Approval of Minutes

Approve the January 19, 2016 Regular City Council meeting minutes.

B. Proclamation Recognizing February as Black History Month

Approve a proclamation declaring February as Black History Month in the City of El Cerrito and inviting everyone to recognize this month to celebrate the diversity and character of our community and highlight the importance of sharing our culture, customs and traditions with those around us.

C. First Amendment to the Disposition Development and Loan Agreement with Eden Housing Inc. for City Housing Property Located at 10848 and 10860 San Pablo Avenue

Staff requests that the City Council, acting as Housing Successor to the former Redevelopment Agency, adopt a resolution authorizing the City Manager to execute a First Amendment to the Disposition Development and Loan Agreement with Eden Housing, Inc. and making findings and approvals pursuant to the California Community Redevelopment Law in connection with redevelopment of 10848 and 10860 San Pablo Avenue in the City of El Cerrito Redevelopment project area. *An EIR serves as the environmental documentation pursuant to CEQA for approval of the resolution and the First Amendment to the DDLA.*

D. Application for Fiscal Year 2016-17 Transportation Development Act Article 3 Pedestrian and Bicycle Project Funding for Korematsu Middle School, Safe Route to Schools

Adopt a resolution approving a request to the Metropolitan Transportation Commission (MTC) by the City of El Cerrito for an allocation of Fiscal Year (FY) 2016-17 Transportation Development Act Article 3 Pedestrian and Bicycle Project funding in the amount of \$148,535 for Korematsu Middle School, Safe Routes to School Improvements, Phase I. *Exempt from CEQA.*

E. New Vehicle Purchase

Adopt a resolution authorizing the City Manager to enter into a purchase agreement with Albany Ford-Suburu in the amount of \$26,404 for the purchase of a 2016 Ford Escape to be used by the Community Development Department for building inspections.

F. Economic Development Committee Appointment

Approve an Economic Development Committee recommendation to appoint Mark Figone to the Economic Development Committee.

6. PUBLIC HEARINGS

Extension of Massage Establishment Ordinance

Conduct a public hearing and upon conclusion, adopt the attached interim urgency ordinance making findings and extending a temporary moratorium on the establishment or relocation of new and existing massage establishments for twelve months to become effective upon the expiration of the current moratorium. *Exempt from CEQA.*

7. POLICY MATTERS

Establish Council Subcommittee and Task Force for City's Centennial Celebration

Staff requests that the City Council take the following actions: 1) Adopt a resolution establishing a Centennial Celebration Planning Task Force, an advisory body charged with making a recommendation to the City Council regarding events and activities to carry out in 2017 to celebrate El Cerrito's 100 year history as an incorporated city; and 2) Establish a Council Subcommittee comprised of the Mayor and Mayor Pro Tem to work with the Centennial Celebration Planning Task Force.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next City Council meeting is Tuesday, February 16, 2016.

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT-Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

EL CERRITO CITY COUNCIL

MINUTES

CITY COUNCIL MEETING
Tuesday, January 19, 2016 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Gabriel Quinto

ROLL CALL

Councilmembers Abelson, Bridges, Friedman, Quinto and Mayor Lyman all present.

7:00 p.m. CONVENE CITY COUNCIL MEETING

Mayor Lyman convened the regular City Council meeting at 7:03p.m.

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE was led by Mayor Greg Lyman.

2. COUNCIL / STAFF COMMUNICATIONS

Melissa Tigbao, Engineering Manager, announced that staff rescheduled the City Council's consideration of parking modifications surrounding Korematsu Middle School from January 19 to February 16, 2016.

Councilmember Abelson expressed appreciation for everyone involved in the Martin Luther King Jr. Day Parade and Celebration. Everyone who worked on the event did a great job.

Mayor Lyman thanked the El Cerrito Chamber of Commerce for inviting him to deliver a State of the City presentation and participate in the Chamber's annual installation of officers. The Chamber has been in existence since 1936. The Chamber Officers are Marty Kalisky, Mark Figone, John Stashik and Melanie Mintz. Mayor Lyman also highlighted the progress associated with the installation of a Marin Clean Energy (MCE) sponsored solar project at the Chevron facility in Richmond. The project is proceeding well however Pacific Gas and Electric Company (PG&E) has announced that it will not be able to do the work it needs to do to make the project operational in October and is pushing the work to March of 2017.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Cordell Hindler, representing the Park Plaza Neighborhood Association in Richmond, expressed concerns about El Cerrito Police Officers driving through his neighborhood. Mr.

Hindler also announced that the Contra Costa Civic Theatre's next production is "The Clean House."

4. PRESENTATIONS

Plan Bay Area 2040 Framework and Process – *Presentation by Pedro Galvao, Regional Planner, Association of Bay Area Governments.*

Receive a presentation from the Association of Bay Area Governments (ABAG) regarding the Plan Bay Area 2040 Framework and Process.

Presenters: Margaret Kavanaugh-Lynch, Development Services Manager and Pedro Galvao, Regional Planner, ABAG.

Action: Received presentation.

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5A through 5E

Moved, seconded (Abelson/Friedman) and carried unanimously to approve Consent Calendar Item Nos. 5A through 5E in one motion as indicated below.

A. Approval of Minutes

Approve the following City Council meeting minutes: 1) December 1, 2015 Regular City Council; 2) December 15, 2015 Regular City Council; 3) December 21, 2015; and 4) January 5, 2016 Special City Council.

Action: Approved minutes.

B. Regulation of Medical Marijuana Cultivation and Deliveries

First reading December 15, 2015. Approved by unanimous vote.

Adopt Ordinance No. 2016-01 amending Chapter 6.80 of the El Cerrito Municipal Code ("Medical Marijuana Dispensaries") regarding the Cultivation of Marijuana.

Action: Adopted Ordinance No. 2016-01.

C. Huber Park Improvement Project, City Project No. C3054

Adopt a resolution which take the following actions: 1) Approve plans for the Huber Park Improvements Project; 2) Accept the three submitted bids; and 3) Authorize the City Manager to execute a contract in the amount of \$138,653.00 with HM Construction and to approve change orders in an amount not to exceed \$13,347.00 for the construction of the Huber Park Improvements Project. *Exempt from CEQA.*

Action: Moved, seconded (Abelson/Friedman) and carried unanimously to adopt Resolution No. 2016-02.

D. Agreement with West Coast Arborists, Inc. for Tree Pruning, Removal and Maintenance Services

Adopt a resolution authorizing the City Manager to execute an agreement with West Coast Arborists, Inc. to provide tree pruning, maintenance services and removal of City trees in an amount not to exceed \$70,000 for a contract term ending June 30, 2016.

Action: Adopted Resolution No. 2016-03.

E. Tree Committee Reappointments

Approve a Tree Committee recommendation to reappoint Ralph Boniello, Steve Price and Mike Srago to the Tree Committee for four year terms.

Action: Approved a Tree Committee recommendation to reappoint Ralph Boniello, Steve Price and Mike Srago to the Tree Committee for four year terms concluding on January 1, 2020.

6. PUBLIC HEARINGS – None

7. POLICY MATTERS

REDEVELOPMENT SUCCESSOR AGENCY ITEM

A. Review and Authorize Submittal of 2016-17 Draft Recognized Obligation Payment Schedule 16-17 (July 1, 2016 – June 30, 2017)

Adopt a Successor Agency resolution reviewing and authorizing submittal of the draft Recognized Obligations Payment Schedule 16-17 and approving inclusion on the Recognized Obligation Payment Schedule reimbursement to the City for Streetscape Improvements made pursuant to an approved Redevelopment project plan for infrastructure improvements.

Presenter: Melanie Mintz, Community Development Director.

Speaker: Cordell Hindler, Richmond, expressed his support for the resolution.

Action: Moved, seconded (Friedman/Bridges) and carried unanimously to adopt Successor Agency Resolution No. 2016-01, including a revised page 3 to the exhibit.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

Mayor Lyman reported on his attendance at the January 2016 Contra Costa Mayors Conference. The Contra Costa Mayors received a presentation regarding labor negotiations and selected Wade Harper of Antioch as Chair and Cindy Silva of Walnut Creek as Vice Chair of the Conference. Mayor Lyman also attended the MCE Technical Committee meeting and received a handout “Electric Utility Exit Fee Oversight: Improvements through Transparency, Accountability and Proper Valuation,” which was distributed to the City Council and public.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 7:56 p.m.

SUPPLEMENTAL REPORTS AND COMMUNICATIONS

Item No. 7(A) Review and Authorize Submittal of 2016-17 Draft Recognized Obligation Payment Schedule 16-17 (July 1, 2016 – June 30, 2017)

1. Substitution of page 3 of Exhibit A to the resolution – *Submitted by Melanie Mintz, Community Development Director.*

Item No. 8 Council Assignments/Liaison Reports

2. MCE “Electric Utility Exit Fee Oversight: Improvements through Transparency, Accountability and Proper Valuation – *Submitted by Mayor Lyman.*

***CITY COUNCIL OF THE CITY OF EL CERRITO PROCLAMATION
Recognizing February as Black History Month in the City of El Cerrito***

WHEREAS, much of the City of El Cerrito's honor, strength and distinction can be attributed to the diversity of cultures and traditions that are celebrated by our residents; and

WHEREAS, African Americans have played a significant role in the history of our nation and California's economic, cultural, spiritual, and political development while working tirelessly to promote their culture and history; and

WHEREAS, as a result of their determination, hard work, and perseverance, African Americans have made valuable and lasting contributions to our community and our state, achieving exceptional success in all aspects of society including business, education, politics, science, and the arts; and

WHEREAS, in 1976, Black History Month was formally adopted to honor and affirm the importance of Black History throughout our American experience, and is full of individuals who took a stance against prejudice, advanced the cause of civil rights, strengthened families, communities, and our nation; and

WHEREAS, all Americans are encouraged to reflect on past successes and challenges of African Americans and look to the future to improve society so that we live up to the ideals of freedom, equality, and justice.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby declare February as Black History Month in the City of El Cerrito, and invites everyone to recognize this month to celebrate the diversity and character of our community and highlight the importance of sharing our culture, customs and traditions with those around us.

Dated: February 2, 2016

Janet Abelson, Mayor Pro Tem



AGENDA BILL

Agenda Item No. 5(C)

Date: February 2, 2016
To: El Cerrito City Council
From: Melanie Mintz, Community Development Director
Subject: Approval of First Amendment to the Disposition Development and Loan Agreement with Eden Housing Inc. for City Housing Property at 10848 and 10860 San Pablo Avenue

ACTION REQUESTED

Staff requests that the City Council, acting as Housing Successor to the former Redevelopment Agency, adopt a resolution authorizing the City Manager to execute a First Amendment to the Disposition Development and Loan Agreement with Eden Housing, Inc. and making findings and approvals pursuant to the California Community Redevelopment Law in connection with redevelopment of 10848 and 10860 San Pablo Avenue in the City of El Cerrito Redevelopment project area.

BACKGROUND

The former El Cerrito Redevelopment Agency (Agency) acquired the property at 10848 and 10860 San Pablo Avenue (Property) in May 2009, with a combination of Agency bond proceeds and Low and Moderate Income Housing Fund (LMIHF) monies, with the intention of redeveloping the site as affordable housing. Through an Agency Board study session held October 19, 2009, the Agency Board identified redevelopment objectives for the site that included helping to revitalize the Civic Center/Midtown area, provide affordable housing, and help meet community housing needs.

Through a developer solicitation process, on October 18, 2010 the Agency Board selected Eden Housing, Inc as Developer for the Property (Developer). On February 22, 2011 the Agency Board authorized the Executive Director to execute an Exclusive Negotiating Rights Agreement (ENRA) with the Developer for the purpose of negotiating a Disposition and Development Agreement (DDA) for an affordable residential mixed use development.

On March 7, 2011, the Agency Board adopted Resolution No. 606 authorizing the execution of a predevelopment loan agreement for \$350,000 from the Low and Moderate Income Housing Fund with Eden Housing Inc. for the Project (Predevelopment Loan).

In 2011, the State budget bill ABX 1 26 (the Dissolution Act) was enacted to dissolve redevelopment agencies. On January 17, 2012, the City Council adopted Resolution No. 2012-04 to retain the housing assets and functions previously performed by the

Agenda Item No. 5(C)

Redevelopment Agency and became the housing successor to the El Cerrito Redevelopment Agency. Pursuant to the Dissolution Act, the Redevelopment Agency was dissolved as of February 1, 2012. Upon dissolution, all housing assets, including the Property, less the unencumbered housing balance, and obligations of the former Agency were transferred to the City as Housing Successor.

In December 2013, the Planning Commission adopted Resolution No. 2013-17 making findings, certifying a Final Environmental Impact Report (EIR), and adopting a Mitigation Monitoring and Reporting Program for the Project pursuant to the California Environmental Quality Act and adopted Resolution No. 2013-18 approving planning entitlements for the Project on December 18, 2013. On January 8, 2014, the Design Review Board adopted Resolution No. DRB14-02 granting design approval for the Project.

On April 22, 2014, the City Council authorized the City Manager to enter into a Disposition Development and Loan Agreement (DDLA) with Eden, Inc. for development of a 63-unit mixed-use senior affordable housing community, consisting of 62 one-bedroom units and one two-bedroom manager's unit and ground floor commercial space which was to include a medical clinic (Resolution No. 2014-10). Since that time, the Developer has worked to secure all necessary project financing. The Developer has applied for and secured federal HOME and Community Development Block Grant (CDBG) gap funding from the Contra Costa County Department of Conservation and Development, Affordable Housing Program (AHP) funding from the Federal Home Loan Bank of San Francisco and Affordable Housing and Sustainable Communities (AHSC) funding, also referred to as "Cap and Trade" funds, from the State of California Department of Housing and Community Development. The Contra Costa Housing Authority has also committed to providing 39 project based vouchers and 23 Rental Assistance Demonstration (RAD) vouchers as operating subsidy to the project.

In July 2015, the Developer applied for competitive 9% tax credits to complete the financing package for the project, but was not successful due to the extremely competitive region in which the affordable senior housing project is located. The Developer intends to reapply for this funding in March 2016 and is currently working to improve its competitiveness in the upcoming tax credit cycle. As such, the Developer has requested from the City that it be permitted to make project modifications to reduce the project cost and therefore improve its competitiveness, which is in part calculated based on the ratio of public funding to the total project development costs.

SUMMARY OF PROPOSED DDLA MODIFICATIONS

Development Project

The proposed physical changes include, primarily, reducing the overall height of the project by one-story and removing the medical clinic commitment. Completing the two major changes necessitates several other minor changes, but maintains the overall unit count, density and reconfigures the ground-floor floor plan resulting in additional café/retail space and enlarges the resident courtyard, increasing the overall amount of open space provided by the project. The proposed physical changes are further detailed

in Planning Commission Resolution PC16-04 and the associated staff report, which was approved on January 20, 2016 (Attachment 2). The proposed changes are also scheduled to be reviewed by the Design Review Board on February 3, 2016. No changes are planned to the renovation of the former Contra Costa Florist Shop or to the Heritage Plaza, which will feature Japanese-inspired landscaping and an interpretive display commemorating the history of the site.

The above described project changes were necessitated to reduce the development costs and thereby improve the project's competitiveness for tax credit financing. Where necessary, the changes are captured in the First Amendment to Disposition Development and Loan Agreement and associated exhibits (Attachment 3).

Predevelopment Loan

In 2011, the El Cerrito Redevelopment Agency and the Developer entered into a Predevelopment Loan Agreement (RDA Resolution No. 606) for the purpose of increasing, improving and preserving the community's supply of low- and moderate-income housing pursuant to California Health and Safety Code (s)33334.2 in which the Agency obligated \$350,000 of financial assistance to the Developer from the Agency's Low and Moderate Income Housing Fund to fund certain predevelopment activities related to the development of the Property. The City, as Housing Successor, acquired the Predevelopment Loan Agreement from the El Cerrito Redevelopment Agency in accordance with Health and Safety Code Section 34176(e) as a Housing Asset. \$100,000 of the Low and Moderate Income Housing Fund Financing has been disbursed to the Developer. The outstanding balance of the loan obligation consisting of \$250,000, however, has been rejected by the California Department of Finance (DOF) as an enforceable obligation.

In an effort to replace at least a portion of the funding rejected by the DOF, staff is currently proposing that the City make a loan to the Developer in the amount of \$200,000 utilizing funds in the City's Low and Moderate Income Housing Asset fund, which consists of repayments of SERAF/ERAF funds due to the Housing Successor. The loan would be made to Eden under the same terms as was previously contemplated for the predevelopment loan. Loan repayments would be made to the extent of available cash generated from the Project with all loan funds due in full at the end of 55 years. The proposed modified loan terms are included and incorporated in the First Amendment to Disposition Development and Loan Agreement and associated exhibits (Attachment 3).

ENVIRONMENTAL REVIEW

The Planning Commission adopted Resolution No. 2013-17 making findings, certifying a Final Environmental Impact Report (EIR), and adopting a Mitigation Monitoring and Reporting Program (MMRP) for the Project.

The City has complied with the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines (collectively "CEQA") through the preparation and certification of the EIR and the MMRP. The Project as defined with the proposed modifications is consistent with the planning entitlements and

the certified EIR for the project. There have been no changes to the project or the mitigations measures that would require the preparation of any supplemental environmental analysis pursuant to CEQA.

FINANCIAL CONSIDERATIONS

The proposed \$200,000 loan from the City's Low and Moderate Income Housing Asset Fund will reinstate a portion of the funds denied by the DOF through the Recognized Obligation Payment Schedule (ROPS) process. The loan is proposed to be distributed in two installments. The first installment of \$100,000 is proposed to be disbursed upon execution of the First Amendment to Disposition Development and Loan Agreement (Attachment 3). The second installment is proposed to be disbursed when the Developer secures all of its additional required financing and submits construction plans for a City building permit but in no event before July 1, 2016 when the City expects to receive the additional funds necessary. In order to disburse the first installment to the Developer, an amendment to the FY 2015-16 adopted budget is required to add \$100,000 of spending authority to the LMHI Fund. The Low and Moderate Income Housing Asset fund currently has adequate funds available and is due to receive additional funds, sufficient for the second installment, at the beginning of Fiscal Year 2016-17 via the ROPS schedule.

LEGAL CONSIDERATIONS

The legal counsel to the City as Housing Successor has reviewed this report and the attachments.

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. Resolution
2. Planning Commission Staff Report and Resolution
PC16-04
3. First Amendment to Disposition Development and
Loan Agreement Between the City of El Cerrito and
Eden Housing

RESOLUTION NO. 2016-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AS HOUSING SUCCESSOR TO THE EL CERRITO REDEVELOPMENT AGENCY (THE "CITY") AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO DISPOSITION DEVELOPMENT AND LOAN AGREEMENT WITH EDEN HOUSING, INC. AND MAKING FINDINGS AND APPROVALS PURSUANT TO THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW IN CONNECTION WITH REDEVELOPMENT OF THAT CERTAIN PROPERTY LOCATED AT 10848 AND 10860 SAN PABLO AVENUE IN THE CITY OF EL CERRITO REDEVELOPMENT PROJECT AREA

WHEREAS, the City Council (the "City Council") of the City of El Cerrito (the "City") has adopted the City of El Cerrito Redevelopment Plan, originally adopted by Ordinance No. 77-17, dated November 28, 1977, (the "Redevelopment Plan"). The Redevelopment Plan sets forth a plan for redevelopment of the City of El Cerrito Redevelopment Project Area (the "Project Area"); and

WHEREAS, the former El Cerrito Redevelopment Agency (the "Agency") and City of El Cerrito have encouraged redevelopment in specific portions of the El Cerrito Redevelopment Project Area in accordance with the goals and objectives of the City of El Cerrito Redevelopment Plan as amended; and

WHEREAS, the Agency acquired 10848 and 10860 San Pablo Avenue (the "Property") for the purposes of increasing, improving and preserving the community's supply of low- and moderate-income housing and, in part, used Housing Fund monies to purchase the Property pursuant to California Health and Safety Code §33334.2; and

WHEREAS, the El Cerrito Redevelopment Agency and the Developer entered into the Predevelopment Loan Agreement (the "Predevelopment Loan Agreement") for the purposes of increasing, improving and preserving the community's supply of low- and moderate-income housing pursuant to California Health and Safety Code §33334.2 in which the Agency obligated Three Hundred Fifty-Thousand Dollars (\$350,000) of financial assistance to the Developer (the "Low and Moderate Income Housing Fund Financing") from the Agency's Low and Moderate Income Housing Fund to fund certain predevelopment activities related to the development of the Property with affordable housing, which loan is evidenced by a promissory note (the "Original Note"), and is secured by the Developer's assignment of all rights in and to certain plans specifications and other predevelopment documents (the "Assignment Agreement"). The City acquired the Predevelopment Loan Agreement from the El Cerrito Redevelopment Agency in accordance with Health and Safety Code Section 34176(e) as a Housing Asset, as defined in Section 34176(e). One Hundred Thousand Dollars (\$100,000) of the Low and Moderate Income Housing Fund Financing has been disbursed to the Developer. The outstanding balance of the loan obligation consisting of \$250,000 of the Loan has been rejected by the California Department of Finance as an enforceable obligation eligible for funding from the Redevelopment Property Tax Trust Fund; and

WHEREAS, the City adopted Resolution No. 2012-04 on January 17, 2012 electing to retain the housing assets and functions previously performed by the Agency in accordance with Section 34176 of the Redevelopment Law and becoming the housing successor to the El Cerrito Redevelopment Agency; and

WHEREAS, the Agency was dissolved effective February 1, 2012 pursuant to the State Budget bill ABX1 26 (the “Dissolution Act”) and all housing assets, including the Property less the unencumbered housing balance, and obligations of the former Agency were transferred to the City as housing successor by operation of law; and

WHEREAS, the City and Eden Housing, Inc (the “Developer”) entered into a Disposition Development and Loan Agreement (the “DDLA”) pursuant to which the City agreed to sell the Property to the Developer and the Developer agreed to develop a mixed use development consisting of 63 residential units and ground floor commercial, including 62 units of affordable rental housing with resident services for seniors, commercial space and the renovation of the Contra Costa Florist structure (the “Project”) and would convert the Predevelopment Loan to a permanent loan; and

WHEREAS, the Developer has proposed changes to the Project that have been approved by the City Planning Commission pursuant to Resolution No. PC16-04; and

WHEREAS, the proposed modifications to the project would not alter the project in a way that would necessitate revised environmental review; and

WHEREAS, the City and the Developer now desire to amend the DDLA to address the changes to the Project; and

WHEREAS, the City as the Housing Successor to the former Redevelopment Agency is entitled to receive certain funds from the Redevelopment Property Tax Trust Fund to repay loans made by the former Redevelopment Agency from the Low and Moderate Income Housing Fund to make State mandated contributions to the Educational Revenue Augmentation Fund (“SERAF/ERAF Repayments”); and

WHEREAS, the City as Housing Successor is required by law to place the SERAF/ERAF Repayments in the Low and Moderate Income Housing Asset Fund and to use such Funds for the purposes of increasing, improving and preserving the supply of affordable housing in the City; and

WHEREAS, the City desires to make a loan to the Developer in the amount of \$200,000 from the Low and Moderate Income Housing Asset Fund to replace a portion of the Predevelopment Loan that was disapproved by the Department of Finance; and

WHEREAS, at the time the City approved the DDLA the City prepared the summary called for in Health and Safety Code Section 33433 (the “Section 33433 Summary”) setting out the costs and benefits of the DDLA to the City. The changes to the DDLA in the First Amendment to the DDLA do not significantly change the findings set forth in the Section 33433

Summary and the Section 33433 Summary meets the requirements of Health and Safety Code Section 33433 with respect to the First Amendment to the DDLAS; and

WHEREAS, in considering approval of the First Amendment to the DDLA the City has complied with the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines (collectively “CEQA”) through the preparation and certification of the EIR and the Mitigation Monitoring and Reporting Program, copies of which are on file with the City Clerk; and

WHEREAS, by a staff report accompanying this Resolution and incorporated into this Resolution by this reference (the “Staff Report”), the City has been provided with additional information upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council finds that the above recitals are accurate.
2. The City Council hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the EIR has served as the environmental documentation pursuant to CEQA for approval of this Resolution and the First Amendment to the DDLA. The City Council further specifically finds that there have not been any of the following occurrences since the approval of the EIR that would require a subsequent or supplemental environmental documents in connection with approval of this Resolution and the DDLA:
 - a. There have not been substantial changes in the project analyzed in the EIR which would require major revisions in the EIR and the Mitigation Monitoring Program;
 - b. There have not been substantial changes with respect to the circumstances under which the project analyzed in the EIR will be undertaken which would require major revisions in the EIR and the Mitigation Monitoring Program; and
 - c. There has not been the appearance of new information which was not known and could not have been known as of the date of approval of the EIR and the Mitigation Monitoring Program which is relevant to the approval of the EIR and the Mitigation Monitoring Program as it relates to the approval of this Resolution and the First Amendment to the DDLA.

3. The City Manager is hereby authorized and directed to file a Notice of Determination with respect to the approvals granted by the Resolution in accordance with the applicable provisions of CEQA.

4. The City Council hereby approves the First Amendment to the DDLA and all ancillary documents; approves execution by the City Manager of the First Amendment to the DDLA and all ancillary documents in substantially the form on file with the City Clerk, with such changes as are approved by the City signatory (such approval to be conclusively evidenced by the execution of the First Amendment to the DDLA).

5. The City Council hereby approves a loan to the Developer of Two Hundred Thousand Dollars (\$200,000) to be made from the Low and Moderate Income Housing Asset Fund in accordance with the terms set forth in the First Amendment to the DDLA and the DDLA.

6. The City Council hereby approves an amendment to the Fiscal Year 15-16 budget to appropriate \$100,000 from the Low and Moderate Income Housing Asset Fund to be loaned to the Developer in accordance with the terms set forth in the First Amendment to the DDLA and directs the Finance Director to make any appropriate accounting entries to implement this action

7. Nothing in this Resolution shall affect the City's policy discretion in granting or denying the Planning Approvals.

8. This Resolution shall take immediate effect upon its adoption.

I CERTIFY that at the regular meeting on February 2, 2016, the City Council of the City of El Cerrito passed this resolution by the following vote:

AYES:	COUNCIL MEMBERS:
NOES:	COUNCIL MEMBERS:
ABSTAIN:	COUNCIL MEMBERS:
ABSENT:	COUNCIL MEMBERS:

IN WITNESS of this action, I have hereunto set my hand and affixed the official Seal of said City, this ____ day of February, 2016.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor Pro Tem



Community Development Department - Planning and Building Division

10890 San Pablo Avenue, El Cerrito, CA 94530

(510) 215-4330 - FAX: (510) 233-5401

planning@ci.el-cerrito.ca.us

PLANNING COMMISSION STAFF REPORT

Meeting Date: January 20, 2016

I. SUBJECT

Application: PL15-0132 and 0133

Applicant: Eden Housing

Location: 10848 and 10860 San Pablo Avenue

APN: 503-010-003 and 014

Zoning: Project approved under TOM (Transit Oriented Mixed Use) zoning district. Current Zoning under the San Pablo Avenue Specific Plan is TOMIMU (Transit-Oriented Mid-Intensity Mixed Use)

General Plan: Project approved under Commercial/Mixed Use General Plan land use designation. Current General Plan land use designation is TOMIMU (Transit-Oriented Mid-Intensity Mixed Use)

Request: Planning Commission consideration a two year extension of the approved Conditional Use Permit and Design Review approval and an amendment to the approved Conditional Use Permit to allow modifications including, lowering the overall building height, reconfiguring the floor plans, removing the medical clinic, adding additional café/retail space and enlarging the resident courtyard.

CEQA: An Environmental Impact Report for the project was certified in 2013.

II. BACKGROUND

The El Cerrito Redevelopment Agency purchased the properties at 10848 and 10860 San Pablo Avenue in May 2009. In April 2010, the Agency issued a Request for Proposals/Qualifications for affordable mixed-use residential development on the site. The Redevelopment Agency Board selected Eden Housing's proposal as the most responsive to the RFP/Q. Subsequent to the State Legislature's elimination of redevelopment agencies in 2011, title of the property passed to the City of El Cerrito. In September 2011, Eden Housing submitted an application for a Conditional Use Permit and Design Review for the project.

On December 18, 2013, the Planning Commission adopted an Environmental Impact Report and approved a Conditional Use Permit for the project. The Conditional Use Permit consisted of approval of a medical clinic, and the granting of a density bonus, height increase and parking reduction pursuant to the City's Incentives Program. On January 8, 2014 the Design Review Board approved the architectural design of the project.

Subsequent to the approval of the project, the applicant sought funding to construct the project from a variety of sources available for the construction of affordable housing. The applicant was unable to secure all of the necessary funding during the last funding round, but the applicant plans to submit an additional application for tax credits to fund the project by March 1, 2016.

In order to make the application more competitive for tax credits, certain aspects of the project have been altered. In addition, the applicant has been unable to secure a tenant/operator for the clinic space, leading to reconfiguration of the ground floor floorplan. All of the changes to the project are detailed below.

III. DISCUSSION

The Planning Commission is being asked to consider two types of entitlements at this time. The first is an extension of the existing entitlements which would normally expire on December 18, 2015 (use permit) and January 8, 2016 (design review). Section 19.32.100 of the El Cerrito Zoning Ordinance establishes a two-year limit for permit approvals. Planning Commission approval is required for all extensions longer than one year. Because the applicant submitted an application for an extension and paid the required fees prior to the expiration of the entitlements, the Planning Commission may consider an extension of the entitlements. The applicant is seeking a two-year extension of the entitlements. The Planning Commission is the approval body for all entitlement extensions longer than one year even if the Commission was not the initial approval body. For this project, the Commission is being asked to consider extensions of both the Conditional Use Permit (to December 18, 2017) and the Design Review approval (to January 8, 2018).

In addition to the entitlement extensions, the Planning Commission is also being asked to consider several modifications to the project. The applicant has submitted revised set of plans reflecting these changes. On the revised sheets, the relevant portions of the approved plans are shown and are labeled as such. A summary table of the proposed changes can be found on Sheet A0.1. It is worth noting that several pages from the original plan set which detail the cultural resource interpretive materials related to the former florist shop are included in the revised plan set. No changes are proposed to the interpretive materials.

The project has been revised to redistribute massing, while keeping the unit count and density the same. The applicant is proposing to delete the fifth floor of the building and to redistribute the fifth floor units onto an expanded fourth floor as well as relocating the manager's unit to the first floor. Eliminating the fifth floor enhances the funding competitiveness of the project by reducing construction costs. The change would also make the building more uniform in height, enhancing the feasibility of rooftop photovoltaic panels to be added in the future. The redistribution of units is reflected on the floor plans of the revised first and fourth floor plans on Sheets A2.1 and A2.4 and on the deleted fifth floor plan/revised roof plan on Sheet A2.5.

In addition to these changes, other major modifications are proposed on the ground floor. The applicant had been in initial talks with Samuel Merritt University to operate the medical clinic proposed on the first floor of the project. Ultimately, Samuel Merritt University was unwilling to commit to operate the clinic. The applicant approached other potential clinic operators, but has been unable to secure a commitment for any other organization to operate the clinic. Therefore, the

applicant is proposing to delete the medical clinic and instead expand the square footage of commercial space on the first floor. A total of 2,336 square feet of commercial space is proposed which could be divided into two tenant spaces. Each space would be outfitted with a bathroom and mechanical shafts to allow for the buildout of a food service use in either space. The deletion of the medical clinic has led to a series of other proposed changes to the first floor including the reconfiguration of the office, management areas, community room and bike storage area; and the relocation of the managers unit the ground floor. These changes resulted in the deletion of a corridor that previously ran behind the medical clinic and exited on the south side of the building. Because this exit and the pathway leading from it to the former florist shop has been eliminated, the trellis that previously covered the pathway between the residential building and the former florist shop has been modified so that it only covers the rear entrance to the former florist shop. All of the first floor changes described here can be found on Sheet A2.1.

In addition, the applicant is proposing several more minor changes. The exiting diagram for the project has been revised to reflect the changes described above. The revised exiting plan can be found on Sheet A1.2. The proposed first and upper floor plans have also created a smaller overall building footprint which has led to an increased size for the resident courtyard. This change is also reflected on the first floor plan.

Many of the proposed modifications have also led to design changes which must be considered by the Design Review Board as part of an amendment to the Design Review approval. The Design Review Board will consider these changes at their February 3 meeting. The Design Review Board will consider changes to the building massing, architectural changes and changes to the landscape design. The Planning Commission's purview for the amendment to the Use Permit is changes to the land uses, floor plans and building height. The remaining aspects of the conditional use permit (parking and density) remain unchanged.

Subsequent to the project's approval, the San Pablo Avenue Specific Plan was adopted by the City Council. The project is generally consistent with the goals of the San Pablo Avenue Specific Plan, however, since the project was approved under the zoning in place at the time (the 2008 Zoning Ordinance), the proposed amendment to the Conditional Use Permit has been evaluated under the 2008 Zoning Ordinance and is consistent with the Ordinance.

Consistency with the San Pablo Avenue Specific Plan

The existing project entitlements were adopted in 2013 prior to the adoption of the San Pablo Avenue Specific Plan. The project was evaluated under the 2008 Zoning Ordinance which was in effect for the project site at that time. Subsequently, the San Pablo Avenue Specific Plan was adopted by the El Cerrito City Council and is currently in effect for the project site.

Extending the existing entitlements unchanged is within the Planning Commission's purview and authority. However, the City Attorney has recommended that the Commission evaluate the consistency of the proposed modifications with the San Pablo Avenue Specific Plan in order to make the findings necessary to grant the amendments to the Conditional Use Permit.

Height

The applicant is proposing to remove the fifth floor of the building, lowering the height of the building to 45 feet. The revised height is lower than the maximum of 55 feet established in the San Pablo Avenue Specific Plan for the Transit Oriented Mid-Intensity Mixed Use (TOMIMU) district. The revised height is also taller than the three-story minimum established by the San Pablo Avenue Specific Plan for projects that contain commercial components.

Private/Common Open Space

As a result of the reconfiguration of the ground floor, the size of the resident courtyard increased. The area of the revised resident courtyard is 5,108 square feet. An additional 1,997 square foot gardening area with raised beds is proposed behind the existing stone-faced building. Together, these spaces would create a total of 7,105 square feet of private common open space. The San Pablo Avenue Specific Plan requires a minimum of 80 square feet of Private/Common Open Space per unit. The revised project would provide over 112 square feet of private open space per unit.

Land Uses

The applicant is proposing to delete the medical clinic and replace it with additional retail space along San Pablo Avenue. Retail and restaurant uses are permitted uses in the TOMIMU district. Restaurants that wish to serve alcohol require an Administrative Use Permit (AUP) and such an AUP could be considered at a later date as specific tenants are identified.

CEQA Considerations

The Planning Commission certified an Environmental Impact Report for the project on December 18, 2013. The proposed modifications to the project would not alter the project in a way that would necessitate revised environmental review. The proposed density remains the same and the overall building height would be reduced. The mitigations related to the cultural resource (former florist shop) remain unmodified. The certified Environmental Impact Report remains valid.

General Plan Consistency

In approving the project in 2013, the Planning Commission determined that the project was consistent with the following General Plan policies:

- LU1.3: Quality of Development
- LU1.5: Suitable Housing
- LU1.6: Various Housing Types
- LU1.7: Maximum Density
- LU2.1: San Pablo Avenue
- LU2.2: Commercial Diversification
- LU2.5: Maximum FARs
- LU3.1: Commercial Residential Interaction
- LU3.2: Midtown Center
- LU4.1: Mixture of Uses
- LU4.2: Availability of Goods and Services
- LU4.3: Street Frontages
- LU4.4: Amenities
- LU4.5: Quality of Development
- LU4.6: Crime Prevention
- LU5.3: Mixed Use Projects
- LU5.5: Pedestrians, Bicycles, and Access
- LU6.3: Circulation Alternatives
- LU6.4: Water Conservation
- CD1.2: Design Concept
- CD1.3: High-Quality Design
- CD1.5: Landmarks Preservation
- CD1.9: Building Design

- CD2.1: Street Frontages
- CD2.7: Accessible Design
- CD2.8: City Sidewalk and Pedestrian Walkways
- CD3.3: Site Landscaping
- CD3.8: Public Spaces
- CD3.12: Landscape Species
- CD4.2: Building Articulation
- CD4.5: Energy and Resources
- CD5.1: Design Review Process
- R2.2: Historic Preservation
- R2.4: Coordination
- R2.5: Public Awareness

Additionally, the proposed amendment to the Conditional Use Permit is consistent with the following General Plan policies:

LU2.1 San Pablo Avenue. Promote retail, office and mixed uses along San Pablo Avenue to provide more tax revenues to the City.

The proposed modifications to the project increase the amount of retail space along San Pablo Avenue. The future tenant(s) will likely contribute more taxes to the City than the medical clinic would have.

LU3.1 Commercial/Residential Interaction. Encourage easy access to local businesses as focal points for neighborhood social interaction.

The increased amount of retail space will improve retail access for the residents of the project and other nearby residents and the retail, in conjunction with the adjacent public plaza, will encourage social interaction.

CD1.7 Views and Vistas. Preserve and enhance major views and vistas along major streets and open spaces, providing areas to stroll and benches to rest and enjoy views.

While the project is not within a recognized view corridor, the proposed modifications would eliminate the fifth floor and lower the overall height of the building, thereby limiting any potential view impact.

CD4.1 Compatibility in Building Scale. Avoid big differences in building scale and character between developments on adjacent lots.

The proposed modifications would reduce the overall building height, making the project more consistent with the height of the adjacent City Hall building.

Strategic Plan Consistency

Goal B of the Strategic Plan is to “Achieve long-term financial sustainability” by “maximiz[ing] opportunities for existing and expanding businesses.” As noted above, the proposed modifications to the project will increase the amount of retail space in the project and the future tenants will likely generate more tax revenue than the medical clinic would have.

Goal C of the Strategic Plan is to “deepen a sense of place and community identity” by “promot[ing] strong neighborhoods” and “celebrat[ing] the City’s diversity by welcoming residents

of all ages and cultures and encouraging their civic involvement.” The proposed modifications to the project will retain the unit count of the approved project and will therefore contribute to a strong neighborhood along San Pablo Avenue by adding both residences and retail space. The project will provide senior housing, thus diversifying housing options in El Cerrito.

IV. FINDINGS

To grant the extension of the entitlements for the project, the Planning Commission must confirm the findings made by the Commission when the project was approved on December 18, 2013: (The findings for revised project will be listed below.)

Project Use Permit:

1. *The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.*

The location of the project is on San Pablo Avenue, a major transit corridor. The project is located in the Midtown node, which is identified in the General Plan as one of three major activity hubs along San Pablo Avenue. The size, design and operating characteristics of the project are consistent with the goals and policies of the General Plan relating to San Pablo Avenue and the provision of affordable housing. More detail on General Plan compliance is contained in Finding #3. The surrounding uses include City Hall to the north, the parking area of Village at Town Center to the south, the DMV and its parking lot to the east, across Kearney Street and various smaller commercial establishments to the west, across San Pablo Avenue. The proposed project is consistent design quality and intensity of City Hall and the Village at Town Center, the immediately adjacent properties. The project will add to a consistent and high-quality street frontage along the block of San Pablo Avenue from Manila Avenue to Schmidt Lane. The shade study included in the project plans identifies most of the shadows cast by the project as falling on parking areas and public rights-of-way.

2. *The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.*

The project will provide 62 units of affordable housing, a medical clinic and a retail/café space on San Pablo Avenue. This is a convenient and functional living environment due to its proximity to public transportation. In addition, the applicant will provide onsite services for the residents, increasing the convenience and functionality of the living environment. By providing new commercial establishments on San Pablo Avenue, the project will increase access to goods and services for El Cerrito residents. The retail/café space’s location on the Heritage Plaza will provide a convenient and functional shopping environment. The Heritage Plaza and the interpretive displays will increase public awareness of the site’s history and provide a convenient and functional civic environment. The design of the Heritage Plaza and the overall project make it an attractive amenity for the City and the Design Review Board’s pending review of the project will ensure a high-quality design.

3. *The proposal is consistent with the purposes of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.*

The project complies in all respects with the requirements of the TOM zoning district. Approval of this use permit will permit the project's density, height and parking pursuant to the Incentives Program in Chapter 19.23 of the El Cerrito Zoning Ordinance. As a mixed use affordable housing project on a major transportation corridor and in one of the activity nodes identified in the General Plan, the project will implement many General Plan policies. The project will implement the following General Plan policies: LU1.3: Quality of Development, LU1.5: Suitable Housing, LU1.6: Various Housing Types, LU1.7: Maximum Density, LU2.1: San Pablo Avenue, LU2.2: Commercial Diversification, LU2.5: Maximum FARs, LU3.1: Commercial Residential Interaction, LU3.2: Midtown Center, LU4.1: Mixture of Uses, LU4.2: Availability of Goods and Services, LU4.3: Street Frontages, LU4.4: Amenities, LU4.5: Quality of Development, LU4.6: Crime Prevention, LU5.3: Mixed Use Project, LU5.5: Pedestrians, Bicycles, and Access, LU6.3: Circulation Alternatives, LU6.4: Water Conservation, CD1.2: Design Concept, CD1.3: High-Quality Design, CD1.5: Landmarks Preservation, CD 1.9: Building Design, CD2.1: Street Frontages, CD2.7: Accessible Design, CD2.8: City Sidewalk and Pedestrian Walkways, CD3.3: Site Landscaping, CD3.8: Public Spaces, CD3.12: Landscape Species, CD4.2: Building Articulation, CD4.5: Energy and Resources, CD5.1: Design Review Process, R2.2: Historic Preservation, R2.4: Coordination, and R2.5: Public Awareness.

Medical Clinic:

1. *The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.*

The location of the medical clinic on San Pablo Avenue is appropriate. The location will allow patrons and employees to access the clinic using public transportation. The clinic will add activity to San Pablo Avenue as envisioned in the General Plan. The medical clinic use is not expected to have a negative impact on adjacent properties. The parking analysis conducted as part of the Environmental Impact Report concludes that the clinic will likely not have an impact on the available street parking.

2. *The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.*

The medical clinic will increase the services available on San Pablo Avenue and in the City. Particularly due to its proximity to public transit, the clinic will be a convenient place to receive medical services.

3. *The proposal is consistent with the purposes of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.*

The medical clinic will implement the following General Plan policies: LU2.1: San Pablo Avenue, LU2.2: Commercial Diversification, LU3.1: Commercial Residential Interaction, LU3.2: Midtown Center, and LU4.2: Availability of Goods and Services.

Incentives Program:

A decision to approve a use permit under the Incentives Program shall be based on written findings that the approved incentives are in the public interest and are desirable to the public convenience and welfare and will substantially promote the purposes of the Incentives Program as described in Section 19.23.010. In making this determination, the following factors shall be considered:

1. *What features of the proposed development are desirable and warrant the incentives authorized;*

Provision of affordable housing on a major transportation corridor, preservation of an existing cultural resource, reuse of a blighted site and provision of a public plaza are amenities for the community and are in the public interest and warrant the granting of incentives.

2. *How such features will enhance the quality of life in the City;*

The public plaza will provide a public gathering space on San Pablo Avenue in the major activity node identified in the General Plan. Preservation of the former Contra Costa Florist Building and the related interpretive materials will improve public awareness of the site's history. Provision of affordable housing in this location will provide increased housing opportunities in close proximity to public transit. The reuse of the blighted property will improve the aesthetic value of the property and will generate general activity at this location.

3. *How such features substantially exceed the minimum requirements of the Zoning Ordinance, General Plan, and/or other relevant State and local codes, requirements or policies;*

Ninety-eight percent of the housing units in the project will be affordable. The City does not require provision of affordable housing. The percentage of affordable units proposed exceeds the threshold the applicant would need to provide to achieve a density bonus and concessions under State law. The Heritage Plaza is 87% larger than the public open space requirement for the project.

4. *How approval of the incentives will aid the optimum use of land as defined by the General and/or Specific Plans;*

The General Plan identifies Midtown as a major activity node. The General Plan land use for the site is Commercial/Mixed Use. The proposed incentives will allow the reuse of a blighted site as a mixed use affordable housing development. This will further the General Plan's goal of concentrating activity in Midtown and providing housing for a range of income levels.

5. *How approval of the incentives will help implement the goals and objectives specified in the General Plan, Specific Plans and/or other Council adopted goals, plans and policies.*

As illustrated in the use permit findings above, the project will implement a variety of General Plan policies. The by concentrating housing on a major transit corridor, the project will further the goals of the City's Climate Action Plan.

In addition, the Planning Commission must make the following findings to grant the amendment to the Conditional Use Permit:

1. *The location, size, design, and operating characteristics of the proposed development will be harmonious and compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.*

The proposed modifications to the approved project include reducing the overall height, thereby limiting any shadow impacts. The submitted shadow studies show that the shadow impacts would be limited to the adjacent City Hall property (mainly the parking lot area) and a small portion of the sidewalk along Kearney Street. The substitution of the medical clinic for additional café/retail space will add to the retail environment along San Pablo Avenue and encourage additional retail vitality in the vicinity.

2. *The location and design of the proposal will provide a convenient and functional living, working, shopping, or civic environment that will be an attractive amenity for the City.*

By increasing the size of the resident courtyard, the proposed modifications to the project will enhance the attractiveness of the project as a living environment. The proposed addition of additional café/retail space along San Pablo Avenue will further the City's economic development goals along the Avenue and create a convenient and functional shopping environment for El Cerrito residents.

3. *The proposal is consistent with the purposes of the district where it is located and conforms in all significant respects with the El Cerrito General Plan and with any other applicable plan adopted by the City Council.*

The proposed modifications to the project are consistent with the following General Plan policies: LU2.1 San Pablo Avenue, LU3.1 Commercial/Residential Interaction, CD1.7 Views and Vistas, CD4.1 Compatibility in Building Scale. The proposed modifications conform with the relevant standards of the San Pablo Avenue Specific Plan (maximum height, minimum private/common open space, and permitted land uses.)

V. RECOMMENDATION

Staff recommends approval of Planning Applications PL15-0132 and -0133 as conditioned by the draft resolutions in Attachment 1, 2, and 3 approving an extension of the entitlements and an amendment of the approved Conditional Use Permit.

Proposed Motions:

1. Move adoption of Planning Commission Resolution PC16-02, approving a two year extension of the approved entitlements; and
2. Move adoption of Planning Commission Resolution PC16-03, approving a two year extension of the approved design review entitlements; and
3. Move adoption of Planning Commission Resolution PC16-04, approving an amendment to the approved entitlements to allow modifications including, lowering the overall building height, reconfiguring the floor plans, removing the medical clinic, adding additional café/retail space and enlarging the resident courtyard.

Appeal Period: Within ten (10) calendar days after the date of the decision, the Planning Commission action may be appealed to the City Council.

Attachments:

- 1) Draft Resolution PC16-02
- 2) Draft Resolution PC16-03
- 3) Draft Resolution PC16-04
- 4) Plans dated December 4, 2015
- 5) Staff Report PL11-0129, dated December 18, 2013, for the certification of the project EIR and the approval of the project.
- 6) Resolution PC13-18
- 7) Resolution DRB14-02

Planning Commission Resolution PC16-04

APPLICATION NO. PL15-0133

Draft Resolution

A RESOLUTION OF THE CITY OF EL CERRITO PLANNING COMMISSION AMENDING THE CONDITIONAL USE PERMIT APPROVAL FOR THE EDEN HOUSING SAN PABLO MIXED USE APARTMENT PROJECT AT 10848 AND 10860 SAN PABLO AVENUE TO ALLOW MODIFICATIONS INCLUDING, LOWERING THE OVERALL BUILDING HEIGHT, RECONFIGURING THE FLOOR PLANS, REMOVING THE MEDICAL CLINIC, ADDING ADDITIONAL CAFÉ/RETAIL SPACE AND ENLARGING THE RESIDENT COURTYARD.

WHEREAS, the subject site is located at 10848 and 10860 San Pablo Avenue;

WHEREAS, the zoning district of the site was TOM (Transit Oriented Mixed Use) when the project was approved on December 18, 2013;

WHEREAS, the current zoning district of the site is TOMIMU (Transit Oriented Mid-Intensity Mixed Use);

WHEREAS, the general plan land use designation of the site was Commercial/Mixed Use when the project was approved on December 18, 2013;

WHEREAS, the current general plan land use designation of the site is TOMIMU (Transit Oriented Mid-Intensity Mixed Use);

WHEREAS, on September 28, 2011, the applicant submitted an application for a conditional use permit;

WHEREAS, on October 4, 2011, the applicant held a community meeting to hear input on the project;

WHEREAS, on October 5, 2011, the Design Review Board conducted a study session on the project;

WHEREAS, on November 14, 2011, the applicant held a community meeting to hear input on the project;

WHEREAS, on September 11, 2013, the applicant held a community meeting to hear input on the project;

WHEREAS, on September 18, 2013, the Planning Commission conducted a study session on the project;

WHEREAS, on October 2, 2013, the Design Review Board conducted preliminary conceptual design review on the project;

WHEREAS, on December 18, 2013, the Planning Commission of El Cerrito adopted Resolution PC13-18, granting approval of Conditional Use Permits for the project;

WHEREAS, on December 15, 2015, the applicant submitted an application requesting to amend the Conditional Use Permit approval;

WHEREAS, on January 20, 2016, the Planning Commission adopted Resolution PC16-01, granting a two-year extension of the Conditional Use Permit approval; and

WHEREAS, on January 20, 2016, the Planning Commission of El Cerrito, after due consideration of all evidence and reports offered for review, does find and determine the following:

1. The proposed modifications to the approved project include reducing the overall height, thereby limiting any shadow impacts. The submitted shadow studies show that the shadow impacts would be limited to the adjacent City Hall property (mainly the parking lot area) and a small portion of the sidewalk along Kearney Street. The substitution of the medical clinic for additional café/retail space will add to the retail environment along San Pablo Avenue and encourage additional retail vitality in the vicinity.
2. By increasing the size of the resident courtyard, the proposed modifications to the project will enhance the attractiveness of the project as a living environment. The proposed addition of additional café/retail space along San Pablo Avenue will further the City's economic development goals along the Avenue and create a convenient and functional shopping environment for El Cerrito residents.
3. The proposed modifications to the project are consistent with the following General Plan policies: LU2.1 San Pablo Avenue, LU3.1 Commercial/Residential Interaction, CD1.7 Views and Vistas, CD4.1 Compatibility in Building Scale. The proposed modifications conform with the relevant standards of the San Pablo Avenue Specific Plan (maximum height, minimum private/common open space, and permitted land uses.)

NOW, THEREFORE, BE IT RESOLVED, that after careful consideration of maps, facts, exhibits, correspondence, and testimony, and other evidence submitted in this matter, and, in consideration of the findings, the El Cerrito Planning Commission hereby approves Application No. PL15-0133, subject to the following conditions:

Planning Division:

1. The project will be constructed substantially in conformance with the plans dated December 4, 2015. Minor changes may be approved by the Zoning Administrator.
2. Unless otherwise modified by this resolution, all Conditions of Approval of Resolution PC13-18 remain in effect.

CERTIFICATION

I CERTIFY that this resolution was adopted by the El Cerrito Planning Commission at a regular meeting held on January 20, 2016 upon motion of Commissioner _____, second by Commissioner _____:

AYES:

NOES:
ABSTAIN:
ABSENT:

Sean Moss, AICP
Senior Planner

FIRST AMENDMENT TO
DISPOSITION DEVELOPMENT AND LOAN AGREEMENT
BETWEEN THE CITY OF EL CERRITO AND
EDEN HOUSING

THIS FIRST AMENDMENT TO DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("First Amendment") is entered into as of _____, by and between the CITY OF EL CERRITO, a municipal corporation ("City") and EDEN HOUSING, INC., a California nonprofit public benefit corporation ("Developer"), with reference to the following facts, understandings and intentions of the parties.

RECITALS

- A. The City and the Developer entered into that certain Disposition, Development and Loan Agreement for 10848 and 10860 San Pablo Avenue dated April 2014 (the "Agreement"), whereby the City agreed to transfer to the Developer the Property and the Developer agreed to develop on the Property sixty-three units of affordable rental housing with resident services for senior citizens, approximately 3,000 square feet of commercial space and related parking, landscaping and amenities (the "Development").
- B. The City also agreed, pursuant to the Agreement to provide the Developer with a loan of funds to pay costs associated with the Development, but the availability of a portion of the loan identified as the Post-DDLA Component of the Loan was dependent upon the approval of the California Department of Finance of inclusion of the Post-DDLA Component on a Recognized Obligations Payment Schedule submitted by the Successor Agency to the El Cerrito Redevelopment Agency. The Department of Finance has disapproved funding for the Post-DDLA Component of the Loan.
- C. The City now desires to provide additional loan funds to the Developer in accordance with the terms of this First Amendment.
- D. The Developer has submitted to the City in its regulatory capacity changes to the Development Plans for the Development.
- E. City and the Developer desire to amend the Agreement to include the additional loan funds and to make other changes resulting from changes to the Development.

NOW, THEREFORE, the City and the Developer agree as follows:

1. Medical Clinic. Sections 2.11 and 6.2(a) of the Agreement are hereby deleted in their entirety. Additionally, all references to the Medical Clinic in the Agreement are hereby deleted and Developer shall no longer be required to include within the Development a medical clinic.

2. Predevelopment Loan.

Section 1.1(pp) is hereby amended in its entirety to read as follows:

“Predevelopment Loan” means the loan from the City to the Developer in the amount of \$300,000 more fully described in Section 4.1 below.

Section 4.1 of the Agreement is hereby amended in its entirety to read as follows:

Section 4.1. Amount of Loan.

(a) Predevelopment Loan. The Developer and the former El Cerrito Redevelopment Agency (“Former RDA”) previously entered into that certain Predevelopment Loan Agreement dated May 17, 2011 whereby the Former RDA agreed to loan to the Developer Three Hundred Fifty Thousand Dollars (\$350,000) from the Former RDA’s Low and Moderate Income Housing Fund which may only be used to pay for those predevelopment costs associated with the Development as set forth in Exhibit M to this Agreement. In accordance with Health and Safety Code Section 34176, the City elected to retain the housing assets of the Former RDA. As the successor to the Former RDA’s housing assets and functions, the City received from the El Cerrito Successor Agency One Hundred Thousand Dollars (\$100,000) of the Predevelopment Loan and has disbursed that amount to the Developer. The remaining Two Hundred Fifty Thousand Dollars (\$250,000) of the Predevelopment Loan was to be disbursed to the Developer contingent upon approval of the remaining loan funds on a Recognized Obligation Payment Schedule by the Department of Finance. The Department of Finance has disapproved the remaining \$250,000. The City is willing to loan to the Developer Two Hundred Thousand Dollars (\$200,000) from the City’s Low and Moderate Income Housing Asset Fund (“Replacement Loan”) to replace the \$250,000 portion of the original Predevelopment Loan that is no longer available. The Replacement Loan and the original \$100,000 disbursed to the Developer pursuant to the Predevelopment Document shall collectively be referred to herein as the Predevelopment Loan.

The Agreement replaced and superseded the Predevelopment Document upon the Effective Date of the Agreement but that certain Assignment Agreement entered into by Developer and the City assigning to the City certain contracts and plans continues to remain in full force and effect and continues to secure the Predevelopment Loan for so long as the Predevelopment Loan is outstanding.

The principal amount of the Predevelopment Loan shall be treated in two (2) separate components:

(b) the "Pre-DDLA Predevelopment Component," which is intended for use by the Developer to pay specified predevelopment costs as set forth in Exhibit M. As of the date of this Agreement, the City has disbursed the full amount of the Pre-DDLA Predevelopment Component in the amount of \$100,000.

(c) the "Post-DDLA Component," which is intended for use by the Developer to pay the additional predevelopment costs associated with the Development as set forth in

Exhibit M. The Post-DDLA Component is in the amount of Two Hundred Thousand Dollars (\$200,000) and consists of the Replacement Loan.

3. Predevelopment Loan Disbursement. The following sentence is added to the end of Section 4.6(b):

Notwithstanding anything set forth above, no more than \$100,000 of the Post-DDLA Component shall be disbursed to the Developer prior to the later of (i) the Close of Escrow or (ii) June 1, 2016.

4. Exhibits. Exhibits C and M are hereby replaced in their entirety with the Exhibits attached to this First Amendment.
5. Defined Terms. All defined terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.
6. Effect of First Amendment. Unless otherwise specifically amended by this First Amendment all provisions of the Agreement shall remain in full force and effect. This First Amendment shall take effect as of the date first written above. In the event of conflict between this First Amendment and the Agreement, this First Amendment shall control.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on or as of the date first above written.

DEVELOPER:

EDEN HOUSING INC., a California nonprofit
public benefit corporation

By: _____
Linda Mandolini, President

Date: _____

CITY:

CITY OF EL CERRITO, a municipal corporation

By: _____
Scott Hanin
:
City Manager

Date: _____

EXHIBIT C

FORM OF CITY REGULATORY AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attn: City Manager

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 27383

**REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS
(Tradeway)**

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _____, 2014, by and between the City of El Cerrito, a municipal corporation (the "City") and Eden Housing, Inc., a California nonprofit public benefit corporation (the "Owner").

RECITALS

A. The City has entered into a Disposition, Development and Loan Agreement (the "DDLA") with Owner pursuant to which the City has conveyed to the Owner that certain property located in the City of El Cerrito and more particularly described in Exhibit A attached hereto and incorporated herein (the "Property") upon which the Developer intends to construct 63 units of affordable rental housing with resident services primarily for senior citizens, approximately 3,000 square feet of commercial space and related parking, landscaping and amenities (the "Development"). In addition, pursuant to the terms of the DDLA, the Owner received a Predevelopment Loan to be used for costs associated with the Development. Capitalized terms used in this Agreement and not defined shall have the meanings set forth in the DDLA.

B. The funds loaned to Owner pursuant to the DDLA are in part Low and Moderate Income Housing Funds originally held by the former El Cerrito Redevelopment Agency ("Former RDA"). The former El Cerrito Redevelopment Agency was dissolved in accordance with AB x1 26 and AB 1484 on February 1, 2012. The City as the successor housing agency to the Former RDA, assumed the housing related rights and responsibilities of the Former RDA and acquired the Predevelopment Loan from the former RDA in accordance with Health and Safety Code Section 34176(e) as a Housing Asset.

C. The City has agreed to loan funds to Owner on the condition that the Development be maintained and operated in accordance with Health and Safety Code Sections 33334.2 et seq., 33413(a) and 33413(b)(2)(A)(ii) and in accordance with additional restrictions concerning affordability, operation, and maintenance of the Development, as specified in this Agreement.

D. In consideration of receipt of the Loan at an interest rate substantially below the market rate and in consideration of the conveyance price of the Property at reuse value, Owner has further agreed to observe all the terms and conditions set forth below.

E. In order to ensure that the entire Development will be used and operated in accordance with these conditions and restrictions, the City and Owner wish to enter into this Agreement.

THEREFORE, the City and Owner hereby agree as follows:

1.

DEFINITIONS

a. Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

i. "Actual Household Size" shall mean the actual number of persons in the applicable household.

ii. "Adjusted Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with 25 California Code of Regulations Section 6914 or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, the City shall provide the Owner with a reasonably similar method of calculation of adjusted income as provided in said Section 6914.

iii. "Agency" shall mean the El Cerrito Redevelopment Agency, a public body, corporate and politic.

iv. "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

v. "Assumed Household Size" shall have the meaning set forth in Section 2.2(c). The definition is utilized to calculate affordable rent and is not intended to be a limit on the number of persons occupying a unit.

vi. "City" shall mean the City of El Cerrito.

vii. "Commercial Space" means the approximately 3,000 square foot ground floor commercial space fronting San Pablo Avenue.

viii. "DDLA" shall mean the Disposition, Development and Loan Agreement entered into by and between the City and Owner, dated _____, 2014.

ix. "Deed of Trust" shall mean the deed of trust in favor of the City on the Property which secures repayment of the Loan and performance of this Agreement.

x. "Development" shall mean the Property and the sixty-three (63) affordable housing units with resident services for senior citizens, and commercial space, to be constructed on the Property, as well as all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

xi. "HCD" shall mean the California Department of Housing and Community Development.

xii. "Loan" shall mean all funds loaned to Owner pursuant to the DDLA.

xiii. "Low Income Household" means a household with an Adjusted Income that does not exceed sixty percent (60%) of Median Income.

xiv. "Low Income Rent" means the rent allowed to be charged on the Low Income Units pursuant to Section 2.2(a) below.

xv. "Low Income Units" shall mean the Units that, pursuant to Section 2.1 below, are required to be occupied by Low Income Households.

xvi. "Median Income" shall mean the median gross yearly income adjusted for Actual Household Size (to qualify residents) or Assumed Household Size (to calculate rents), as applicable, in the County of Contra Costa, California, as published from time to time by the State of California Department of Housing and Community Development. In the event that such income determinations are no longer published, or are not updated for a period of at least eighteen (18) months, the City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by the State of California Department of Housing and Community Development.

xvii. "Note" shall mean the promissory note from the Owner to the City evidencing all or any part of the Loan.

xviii. "Owner" shall mean Eden Housing, Inc., a California nonprofit public benefit corporation, and its successors and assigns to the Development.

xix. "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

xx. "Rent" shall mean the total of monthly payments by the residents of a Unit (other than the manager's Unit) for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner which are required of all residents, other than security deposits; the cost of an adequate level of service for utilities paid by the resident, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or

telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Resident.

xxi. "Resident" shall mean an individual or household occupying a Unit.

xxii. "Senior Household" shall mean a household that contains at least one senior citizen as defined in California Civil Code Section 51.3.

xxiii. "Term" shall mean the term of this Agreement, which shall commence on the date of recordation of this Agreement, and shall continue for a period of fifty-five (55) years from the date a certificate of occupancy is issued for the Development.

xxiv. "Units" shall mean the individual dwelling units to be constructed on the Property as part of the Development.

xxv. "Very Low Income Household" shall mean a household with an Adjusted Income that does not exceed the qualifying limits for very low income households, adjusted for Actual Household Size, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937, and as published by HCD.

xxvi. "Very Low Income Rent" shall mean the rent permitted to be charged for a Very Low Income Unit pursuant to Section 2.2(a) below.

xxvii. "Very Low Income Units" shall mean the Units, which, pursuant to Section 2.1(a) below, are required to be occupied by Low Income Households.

2.

AFFORDABILITY COVENANTS

a. Occupancy Requirements.

(a) No fewer than thirty (30) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(b) No fewer than thirty-two (32) of the Units shall be rented to and occupied by, or if vacant, available for occupancy by Low Income Households.

(c) All of the Units, other than one Unit reserved for a manager, shall be rented to Senior Households.

b. Allowable Rent.

i. Very Low Income Rent. Subject to Section 2.2(e) and Section 2.3(a) below, the Rent charged to Residents of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Median Income, adjusted for Assumed Household Size.

ii. Low Income Rent. Subject to Section 2.3(a) below, the Rent charged to Residents of the Low Income Units shall not exceed one-twelfth ($1/12^{\text{th}}$) of thirty percent (30%) of sixty percent (60%) of Median Income, adjusted for Assumed Household Size.

iii. In calculating the allowable Rent for the Units, the following Assumed Household Sizes shall be utilized:

<u>Number of Bedrooms</u>	<u>Assumed Household Size</u>
One	2
Two	3
Three	4

iv. No later than May 1st of each calendar year, the City shall provide the Owner with a schedule of permissible maximum Very Low Income Rents and Low Income Rents. Under no circumstance may Owner raise rents above the permissible maximum rents as allowed under the annual rent schedule provided by the City.

v. It is anticipated that the Development will receive Project-Based Section 8 or other rental subsidy payments (collectively referred to as the “HAP Contract”) throughout the Term. If, during the Term, any change in federal law occurs or any action (or inaction) by Congress or any federal or State agency, which results in a reduction, termination or nonrenewal of the HAP Contract through no fault of the Owner (“Federal or State Action”), such that the rental subsidy projected on the approved Financing Plan is no longer available, the City shall allow the Developer to increase the rents on one or more of the Very Low Income Units to Low Income Rents provided that the Developer has demonstrated to the satisfaction of the City Manager that such a rent increase is necessary to maintain the financial stability of the Development. The Developer shall provide the City Manager with a projected operating budget for the Development showing the impact of the loss or reduction of the rental subsidy as well as the last two full years of audited financial statements for the Development showing actual costs and expenses of operating the Development at the time Developer requests an increase in the rents. The City Manager shall have authority to approve an increase in the rents on a sufficient number of Very Low Income Units to a rent not exceeding the Low Income Rent in order to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown on the submitted operating budget, provided, however, any such rent increase shall only be allowed pursuant to a transition plan mutually agreed upon by the City and Developer consistent with any applicable TCAC regulations and only to the extent not otherwise prohibited under the TCAC Regulatory Agreement or any other regulatory agreement recorded on the Development. Developer shall make all commercially reasonable efforts to obtain alternative sources of rental subsidies and shall provide the City with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the rents on the Very Low Income Units to be reduced to the Very Low Income Rents. Upon receipt of any alternative rental subsidies, the Developer shall reduce the rents on the units subject to the rent increase to the Very Low Income Rents to the greatest extent possible.

c. Increased Income of Residents.

i. Increase from Very Low Income to Low Income. If, upon recertification of the income of a Tenant of an Affordable Unit, the Owner determines that a former Very Low Income Household's Adjusted Income has increased and exceeds the qualifying income for a Very Low Income Household, but does not exceed the maximum qualifying income for a Low Income Household, then, upon expiration of the Tenant's lease:

Such Tenant's Unit shall be considered a Low Income Unit;

Such Tenant's Rent may be increased to a Low Income Rent, upon sixty (60) days' written notice to the Tenant; and

The Owner shall rent the next available Unit to a Very Low Income Household at Rent not exceeding the maximum Rent specified in Section 2.2 to comply with the requirements of Section 2.1 and Section 2.2 above.

ii. Non-Qualifying Household. If, upon recertification of the income of a Tenant of an Affordable Unit, the Owner determines that a former Very Low Income Household or a Low Income Household has an Adjusted Income exceeding the maximum qualifying income for a Low Income Household, such Tenant shall be permitted to continue occupying the Unit and upon expiration of the Tenant's lease and upon sixty (60) days written notice, the Rent may be increased to the fair market rent, and the Owner shall rent the next available Unit to a Very Low Income Household or Low Income Household, as applicable, to meet the requirements of Section 2.1 above.

iii. Termination of Occupancy. Upon termination of occupancy of an Affordable Unit by a Tenant, such Affordable Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Very Low Income Household or Low Income Household) as the income level of the vacating Tenant, until such Affordable Unit is reoccupied, at which time the income character of the Affordable Unit (e.g., Very Low Income Unit or Low Income Unit) shall be redetermined. In any event, Owner shall maintain the occupancy requirements set forth in section 2.1 above.

d. Resident Selection.

i. No later than six (6) months prior to the projected date of the completion of the Development, Owner shall submit to the City for approval its plan for marketing the Development to income-eligible Senior Households.

ii. The Owner shall not discriminate against any applicants for tenancy on the basis of source of income or rent payment (for example, without limitation, Temporary Assistance for Needy Families (TANF) or Section 8), and Owner shall consider a prospective Resident's previous rent history of at least one (1) year, or such other time period the Owner deems reasonable, as evidence of the prospective Resident's ability to pay the applicable Rent.

e. Lease Provisions. Owner shall include in leases for all Units provisions which authorize Owner to immediately terminate the tenancy of any household one or more of whose

members misrepresented any fact material to the household's qualification as a Very Low Income Household or Low Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits for a Very Low Income Household or Low Income Household, such household's Rent may be subject to increase.

f. Condominium Conversion. The Owner shall not convert Development units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

3.

INCOME CERTIFICATION AND REPORTING

a. Income Certification. With respect to new Residents, the Owner will obtain, and complete, as a condition to initial occupancy and with respect to new Residents, obtain and maintain on file annually thereafter, income certifications from each Resident renting any of the Units. The Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking two or more of the following steps as a part of the verification process: (1) obtain a minimum of the three (3) most current pay stubs for all adults age eighteen (18) or older; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain the three (3) most current savings and checking account bank statements; (5) obtain an income verification form from the applicant's current employer; (6) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (7) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. Copies of Resident income certifications shall be available to the City upon request.

b. Annual Report to City. Owner shall submit to the City (a) not later than the forty-fifth (45th) day after the close of each calendar year, or such other date as may be requested by the City, a statistical report, including income and rent data for all Units, setting forth the information called for therein, and (b) within fifteen (15) days after receipt of a written request, any other information or completed forms requested by the City.

c. Additional Information. Owner shall provide any additional information reasonably requested by the City. The City shall have the right to examine and make copies of all books, records or other documents of Owner which pertain to any Unit.

d. Records. Owner shall maintain complete, accurate and current records pertaining to the Development, and shall permit any duly authorized representative of the City to inspect records, including records pertaining to income and household size of Residents, during regular business hours and upon at least one (1) business day's prior notice. All Resident lists, applications and waiting lists relating to the Development shall at all times be kept separate and identifiable from any other business of the Owner and shall be maintained as required by the City, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the City. The Owner shall retain copies of all materials obtained or produced with respect to occupancy of the Units for a period of at least five (5) years.

e. Annual Operating Budget. The Owner shall within sixty (60) days of the end of each of the Owner's fiscal year, furnish the City a proposed Annual Operating Budget for the following calendar year. Upon receipt by the City of the proposed Annual Operating Budget, the City shall promptly review the same and approve or disapprove it within ten (10) working days. If the proposed Annual Operating Budget is not approved by the City, the City shall set forth in writing and notify the Owner of the City's reasons for withholding such approval. The Owner shall thereafter submit a revised proposed Annual Operating Budget for City approval, which approval shall be granted or denied within five (5) working days in accordance with the procedures set forth above.

f. On-site Inspection. The City shall have the right to perform an on-site inspection of the Development at least one (1) time per year during regular business hours upon at least five (5) business days' prior notice, and without interfering with the rights of tenants in the Development. The Owner agrees to cooperate in such inspection.

4.

OPERATION OF THE DEVELOPMENT

a. Operation.

i. Residential Units. The Units, shall be operated only for residential use as permanent multifamily rental housing. The Owner shall comply with the requirements of the California Civil Code Section 51.3 et seq. with regard to the operation of a Senior Citizen Housing Development.

ii. Commercial Space. Prior to conveyance of the Property by the City to the Owner, the Owner submitted to the City and the City approved a Leasing Agent and a leasing plan for the Commercial Space. The Owner shall use its best efforts to lease the Commercial Space, during the Term, in accordance with the approved leasing plan for uses that are consistent with the approved entitlements for the Development. Prior to entering into any lease for the Commercial Space with a tenant that is not consistent with the City approved leasing plan, the Owner shall submit the proposed use to the City for its approval, which approval shall not be unreasonably withheld if the proposed use of the Commercial Space is consistent with the entitlements for the Development. If, after a reasonable period of time, the Owner has been unable to lease the Commercial Space in accordance with the approved leasing plan, the Owner may elect to prepare a revised leasing plan, in which case the Owner shall submit such revised leasing plan to the City for its review and approval. If Owner determines to replace the Leasing Agent at any time, the Owner shall submit for the City's approval the identity of the proposed Leasing Agent as well as information on the background and experience of the proposed Leasing Agent. Unless the proposed Leasing Agent is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for the disapproval, the Leasing Agent shall be deemed approved. The City shall approve or disapprove the proposed Leasing Agent within thirty (30) days of receipt of the relevant information. If the City disapproves the proposed Leasing Agent the City shall state its reasons for such disapproval in writing.

iii. The Owner covenants and agrees to pay to the City fifty percent (50%) of any “Surplus Cash” (defined below) generated by the Commercial Space sublease after payment of Owner's annual operating costs associated with the Commercial Space for the prior fiscal year. The City shall use any funds paid to the City by the Developer pursuant to this Section 4.1(d) for purposes of furthering the City’s affordable housing goals. The Owner agrees to provide annual financial statements showing its actual income and expenditures related to the Commercial Space no later than one hundred twenty (120) days after the end of the Owner’s fiscal year and at such time to pay to the City fifty percent (50%) of the “Surplus Cash” which shall be defined as the “net operating income” (as defined by the financial statements), plus or minus those items and in such amounts as may be agreed upon by the City and Owner prior to the execution of any sublease for the Commercial Space. The City shall have the right to inspect the Owner’s and Owner’s affiliated master lessor’s books and records with regards to the Commercial Space. Consistent with the City’s agreement to use any revenues received under this Section 4.1(d) for the City affordable housing goals, the City shall give priority to the Development in the event such revenues are needed to maintain the financial stability of the residential portion of the Development or to expand the scope of City-approved tenant services.

iv. The Owner may master lease the Commercial Space to an affiliate of the Developer, subject to the City's approval of any such master lease. The City shall approve any such master lease provided the master lease requires the master lessee to comply with all of the obligations set forth herein with regards to the Commercial Space and the City is a third party beneficiary of the master lease with respect to the requirements of this Agreement.

b. Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, old age benefit, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any line or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

c. Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Owner shall not give preference to any particular class or group of persons in renting the Units, except to the extent that the Units are required to be leased to senior citizens who qualify as Very Low Income or Low Income Households. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, age, source of income, disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit, except to the extent allowed pursuant to California Civil Code Section 51.3, nor shall Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of residents, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Development. All deeds, leases or contracts made or entered into by Owner as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the DDLA.

d. Section 8 Certificate Holders. The Owner will accept as residents, on the same basis as all other prospective residents, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective residents, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective Residents.

e. Preference to Displacees. Owner shall give a preference in the rental of any Units to eligible households displaced by activity of the City or the former El Cerrito Redevelopment Agency, as provided in Health and Safety Code Section 33411.3. The preferences stated in this section apply to the rentals of Units throughout the Term.

5.

PROPERTY MANAGEMENT AND MAINTENANCE

a. Management Responsibilities. The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of residents, certification and recertification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The City shall have no responsibility over management of the Development. The Owner shall retain a professional property management company, approved by the City in its reasonable discretion, to perform its management duties hereunder. A resident manager shall also be required. At least six (6) months prior to completion of construction of the Development Owner shall submit a proposed management plan to the City for approval by the City. The City shall approve or disapprove (with written explanation for disapproval) of the proposed management plan by notifying the Owner in writing within sixty (60) days of the date of submission to the City.

b. Management Agent; Periodic Reports. The Development shall at all times be managed by an experienced management agent reasonably acceptable to the City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The City approves Eden Housing Management Inc. as the initial Management Agent. The Owner shall submit for the City's approval the identity of any proposed Management Agent and on-site resident manager. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent and on-site resident manager as is reasonably necessary for the City to determine whether the proposed Management Agent or on-site resident manager meets the standard for a qualified Management Agent or on-site resident manager set forth above. If the proposed Management Agent or on-site resident manager meets the standard for a qualified Management Agent or on-site resident manager set forth above, the City shall approve the proposed Management Agent or on-site resident manager by notifying the Owner in writing. Unless the proposed Management Agent or on-site resident manager is disapproved by the City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

c. Performance Review. The City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by the City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable the City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with the City in such reviews.

d. Replacement of Management Agent or On-Site Resident Manager. If, as a result of a periodic review, the City determines, in its reasonable judgment, that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, the City shall deliver notice to Owner of its intention to cause replacement of the Management Agent or on-site resident manager, including the reasons therefore. Within fifteen (15) days of receipt by Owner of such written notice, City staff and the Owner shall meet in good faith to consider methods for improving the financial and operating status of the Development. If, after a reasonable period as determined by the City (not to exceed sixty (60) days), the City determines that the Owner is not operating and managing the Development in accordance with the material requirements and standards of this Agreement, the City may require replacement of the Management Agent or on-site resident manager.

If, after the above procedure, the City requires in writing the replacement of the Management Agent or on-site resident manager, Owner shall promptly dismiss the then Management Agent or on-site resident manager, and shall appoint as the Management Agent or on-site resident manager a person or entity meeting the standards for a Management Agent or on-site resident manager set forth in Section 5.2 above and approved by the City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent or on-site resident manager in accordance with the provisions of this Section shall constitute default under this Agreement, and the City may enforce this provision through legal proceedings as specified in Section 6.4.

e. Approval of Management Policies. The Owner shall submit its written management policies with respect to the Development to the City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

f. Property Maintenance. The Owner agrees, for the entire Term of this Agreement, to maintain all interior and exterior improvements, including landscaping, on the Property in good condition and repair (and, as to landscaping, in a healthy condition) and in accordance with all applicable laws, rules, ordinances, orders and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials.

The City places prime importance on quality maintenance to protect its investment and to ensure that all City-assisted affordable housing projects within the City are not allowed to deteriorate due to below-average maintenance. Normal wear and tear of the Development will be acceptable to the City assuming the Owner agrees to provide all necessary improvements to

assure the Development is maintained in good condition. The Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair.

In the event that the Owner breaches any of the covenants contained in this section and such default continues for a period of ten (10) days after written notice from the City with respect to graffiti, debris, waste material, and general maintenance or thirty (30) days after written notice from the City with respect to landscaping and building improvements, then the City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default unless the Owner has commenced to cure such breach within the applicable cure period and is diligently pursuing such cure. Pursuant to such right of entry, the City shall be permitted (but is not required) to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and landscaped areas on the Property, and to attach a lien on the Property, or to assess the Property, in the amount of the expenditures arising from such acts and work of protection, maintenance, and preservation by the City and/or costs of such cure, including a fifteen percent (15%) administrative charge, which amount shall be promptly paid by the Owner to the City upon demand.

6.

MISCELLANEOUS

a. Term. The provisions of this Agreement shall apply to the Property for the entire Term even if the entire Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by the City. The City makes the Loan and conveyed the Property to the Owner on the condition, and in consideration of, this provision, and would not do so otherwise.

b. Compliance with DDLA and Program Requirements. The Owner's actions with respect to the Property shall at all times be in full conformity with: (i) all requirements of the DDLA, Deed of Trust, and Note; and (ii) all requirements imposed on projects assisted with Redevelopment Low and Moderate Income Housing Fund monies under California Health and Safety Code Section 33334.2 et seq.

c. Covenants to Run With the Land. The City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

d. Enforcement by the City. If Owner fails to perform any obligation under this Agreement, and fails to cure the default within thirty (30) days after the City has notified the Owner in writing of the default (or such longer period as provided in the DDLA) or, if the

default cannot be cured within thirty (30) days, failed to commence to cure within thirty (30) days and thereafter diligently pursue such cure, the City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

i. Calling the Loan. The City may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and proceed with foreclosure under the Deed of Trust.

ii. Action to Compel Performance or for Damages. The City may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement, and/or for damages.

iii. Remedies Provided Under DDLA. The City may exercise any other remedy provided under the DDLA.

iv. Remedies Provided Under Deed of Trust. The City may exercise any other remedy provided under the Deed of Trust.

e. Rights of Third Parties to Enforce Covenants. Notwithstanding any other provisions of law, all covenants and restrictions contained herein which implement Health and Safety Code Sections 33334.3 and/or 33413(b)(4), or successor provisions, shall run with the land and shall be enforceable by the City, the County of Contra Costa, and any of the parties listed in Health and Safety Code Section 33334.3(f)(7), so long as such provision or successor provision remains in effect.

f. Listing of Property in Database. Owner hereby acknowledges and agrees that Health and Safety Code Section 33418(c) requires that the Property be listed in a database that shall be made available to the public on the internet and which will include the street address, assessor's parcel number, and other information about the Property. The Owner must disclose this requirement to all Residents and prospective Residents.

g. Attorneys Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

h. Recording and Filing. The City and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Contra Costa.

i. Governing Law. This Agreement shall be governed by the laws of the State of California.

j. Subordination. This Agreement may be subordinated as provided in the DDLA.

k. Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Contra Costa, California.

l. Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent.

m. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

[Signatures on following Page]

IN WITNESS WHEREOF, the City and Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

Address:

City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
Attn: City Manager

CITY:

CITY OF EL CERRITO, a California municipal corporation

By: _____

Name: _____

Its: _____

Address:

Eden Housing, Inc.,
22645 Grant Street
Hayward, CA 94541-5031
Attn: President

OWNER:

EDEN HOUSING, INC., a California nonprofit public benefit corporation

By: _____

Name: _____

Its: _____

STATE OF CALIFORNIA)
)
COUNTY OF CONTRA COSTA)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____

_____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA)
COUNTY OF CONTRA COSTA)

On _____, 20__ before me, _____,
Notary Public, personally appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT A

The land referred to is situated in the County of Contra Costa, City of El Cerrito, State of California, and is described as follows:

Parcel One:

Lots 7, 8, 9, 10, 11, 12, 39, 40, 41, 42, 43 and 44 in Block 50, as designated on the Map entitled "Map of North Berkeley Terrace", which Map was filed in the Office of the Recorder of the County of Contra Costa, State of California, on November 2, 1908, in Vol. 1 of Maps, at Page 26.

APN: 503-010-003

Parcel Two:

A strip of land 10.00 feet in width adjoining the Southwesterly line of Lots 39, 40, 41, 42, 43 and 44, in Block 50 as said lots and block are shown on the Map entitled "Map of North Berkeley Terrace", filed November 2, 1908 in Block 1 of Maps, Page 26, in the Office of the County Recorder of Contra Costa County.

Said strip of land is bounded on the South by the Westerly prolongation of the line common to lots 36 and 37, in block 50 and bounded on the North by the Westerly prolongation of the line common to lots 44 and 45 in Block 50 as said lots and block are shown on said map on North Berkeley Terrace.

(Said Parcel is currently not assessed)

Parcel Three:

Lots 13, 14, 37 and 38, Block 50, as designated on the Map entitled "Map of North Berkeley Terrace", which Map was filed in the Office of the Recorder of Contra Costa County, State of California, on November 2, 1908, in Volume 1 of Maps, at Page 26.

APN: 503-010-014

EXHIBIT M
Predevelopment Costs to be Funded by the Predevelopment Loan

Hana Gardens, El Cerrito, CA 1/25/2016	Senior Housing Predevelopment Budget	DDLA Budget as disbursed	DDLA additional funding Budget
Predevelopment Budget	Total		
Acquisition Deposits		\$ -	\$ -
Appraisal		\$ -	\$ -
Legal		\$ -	\$ -
Financial Consulting		\$ -	\$ -
Architectural	\$ 272,100	\$ 81,203	\$ 190,897
Historical Report (Addendum)	\$ 16,000	\$ 8,997	\$ 7,003
Archaeological Report		\$ -	\$ -
Survey	\$ 9,800	\$ 9,800	\$ -
Lot merger or Condo mapping		\$ -	\$ -
Air Quality		\$ -	\$ -
Soils Report		\$ -	\$ -
Noise & Vibration Study		\$ -	\$ -
Traffic Study		\$ -	\$ -
Phase I Update/ Asb & LBP Survey		\$ -	\$ -
Construction Cost Estimating		\$ -	\$ -
City Planning Fees		\$ -	\$ -
Sponsor Administration		\$ -	\$ -
City Permitting Fees		\$ -	\$ -
Total Predevelopment Costs	\$ 300,000	\$ 100,000	\$ 200,000



AGENDA BILL

Agenda Item No. 5(D)

Date: February 2, 2016

To: El Cerrito City Council

From: Yvetteh Ortiz, Public Works Director/City Engineer

Subject: Application for Fiscal Year 2016/17 Transportation Development Act Article 3 Pedestrian and Bicycle Project Funding for Korematsu Middle School, Safe Routes to School Improvements, Phase 1

ACTION REQUESTED

Adopt a resolution approving a request to the Metropolitan Transportation Commission (MTC) by the City of El Cerrito for an allocation of Fiscal Year (FY) 2016/2017 Transportation Development Act Article 3 Pedestrian and Bicycle Project funding in the amount of \$148,535 for Korematsu Middle School, Safe Routes to School Improvements, Phase 1.

BACKGROUND

In Spring 2015, City staff applied for Safe Routes to School technical assistance offered by the Contra Costa Transportation Authority (CCTA), to evaluate walking and biking routes to Korematsu Middle School at its new campus. Korematsu Middle School is currently housed in a temporary campus, and a new campus located several blocks away is scheduled to open at the end of March 2016. Given the new middle school, the amount of walking and biking trips in this area is expected to increase as a matter of course. In addition, walking and biking is being encouraged as a mode of transportation to the new middle school campus in order to reduce typical automobile congestion around middle schools, as well as to fulfill various goals of the City's Strategic Plan, Climate Action Plan, and Active Transportation Plan. These various City plans all support biking and walking as being practical, healthy, and environmentally-sustainable modes of transportation.

Over the past couple of years as part of the development of the City's Active Transportation Plan¹, projects to improve walking and biking routes to schools throughout the City have been considered. In particular, a detailed project concept has been developed for the East Side Bicycle Boulevard to create a bikeway on roadways

¹ At the City Council Meeting of October 6, 2015, City staff presented the draft final Active Transportation Plan for consideration by the City Council. City staff is currently in the process of revising the plan to respond to comments from the City Council. The revisions are not anticipated to substantively change the project concepts.

Agenda Item No. 5(D)

with low traffic volumes and low vehicle speeds, and connect local destinations such as schools and parks. Bicycle boulevards are considered a “family-friendly” type of bikeway serving bicyclists of all ages and abilities, who may be less comfortable biking in streets with higher traffic.

Most recently, in September 2015, the City of El Cerrito and West Contra Costa Unified School District (WCCUSD) convened a community meeting to provide information and project updates regarding the status of Korematsu Middle School and Castro Park, as well as receive community feedback regarding various issues. The meeting included a presentation by representatives from the City, WCCUSD and its architectural design team, and AC Transit. Community members asked questions and expressed concerns and ideas on several topics among them biking and walking routes for various local destinations including the school, automobile traffic circulation in the neighborhood surrounding and immediately adjacent to the school, and bus stops and routing. In general, community members showed strong support for improved walking and biking routes to Korematsu Middle School, and identified specific intersections needing attention.

In October 2015, Contra Costa County solicited applications for FY 2016/2017 Transportation Development Act (TDA) Article 3 Pedestrian and Bicycle Project funding. Eligible project types for this funding include pedestrian and bicycle infrastructure projects, safety education programs, or comprehensive plans. In response, in November 2015, City staff submitted a preliminary grant application for funding for a Korematsu Middle School, Safe Routes to School Improvements, Phase 1 Project. This project implements an initial set of improvements identified by the CCTA Safe Routes to School technical assistance that identified areas for enhanced school area traffic control and other improvements for biking and walking routes to school based on the prior plans, efforts and meeting discussed above. More specifically, this project would implement pedestrian crosswalk improvements and portions of the East Side Bicycle Boulevard in the vicinity of the school to benefit the safety of students and encourage new walking and biking trips to the school. The preliminary application was evaluated by the Countywide Bicycle Advisory Committee (CBAC), which then provided comments meant to strengthen final applications.

ANALYSIS

At the end of January 2016, City staff submitted the final grant application in the amount of \$148,535 for Korematsu Middle School, Safe Routes to School Improvements, Phase 1 Project. City Council’s approval of the grant application is required by the MTC to comply with TDA Article 3 requirements. The County’s TDA Subcommittee will select and prioritize grant recipients, at which point its recommendations will be forwarded for approval to several entities including the Contra Costa County City-County Engineering Advisory Committee (CCEAC) in March 2016, Mayor’s Conference in April 2016, County Board of Supervisors in May 2016 and finally MTC by June 2016.

STRATEGIC PLAN CONSIDERATIONS

The City's Strategic Plan articulates the mission of the City to serve, lead, and support our diverse and transit-rich community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety, and creating an economically and environmentally sustainable future. Approval of the grant application is consistent with the following El Cerrito Strategic Plan Goals:

- Goal E – *Ensure the public's health and safety* by improving pedestrian and bicycle safety; and
- Goal F – *Foster environmental sustainability citywide* by encouraging alternative modes of transportation to the single occupancy vehicle.

ENVIRONMENTAL CONSIDERATIONS

The project is categorically exempt from review under the California Environmental Quality Act (CEQA). More specifically, the project is exempt under Section 15301(c) Existing Facilities because it consists of the minor alteration of existing streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety), involving negligible or no expansion of use. The project is further exempt under CEQA Section 15304(f) and (h) Minor Alterations to Land because it consists of minor alterations in the condition of land and vegetation, involving minor trenching and backfilling where the surface is restored and the creation of bicycle lanes on existing rights-of-way.

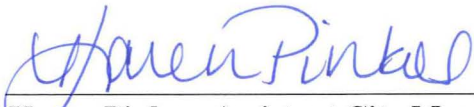
FINANCIAL CONSIDERATIONS

If the grant application is successful, funding of \$148,535 from the FY 2016/2017 TDA Article 3 grant would be appropriated in the Grants Fund as part of the City's FY 2016-17 budget process. Although there are no matching funds required for the grant application, the CBAC recommended matching funds be provided. As such, the value of the following elements of the project are shown as local matching funds in the total amount of \$33,458: the technical assistance provided by the CCTA (approximately \$15,000), preliminary engineering services including project improvement concepts provided by our on-call transportation engineers (\$5,000), some minor signing and striping work (\$7,000) to be completed this year, and City staff time as in-kind services next year (\$6,458). Funding for the elements of the project completed this fiscal year is budgeted in the City's FY 2015-16 Adopted Budget under the Public Works operating budget. City staff time in FY 2016-17 will be considered and proposed under the Public Works operating budget as part of the FY 2016-17 budget process.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed actions and found that legal considerations have been addressed.

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. Resolution

RESOLUTION NO. 2016-XX

RESOLUTION OF THE EL CERRITO CITY COUNCIL APPROVING THE REQUEST TO THE METROPOLITAN TRANSPORTATION COMMISSION FOR AN ALLOCATION OF FISCAL YEAR 2016/2017 TRANSPORTATION DEVELOPMENT ACT ARTICLE 3 PEDESTRIAN/BICYCLE PROJECT FUNDING IN THE AMOUNT OF \$148,535 FOR KOREMATSU MIDDLE SCHOOL, SAFE ROUTES TO SCHOOL IMPROVEMENTS, PHASE 1

WHEREAS, Article 3 of the Transportation Development Act (TDA), Public Utilities Code (PUC) Section 99200 et seq., authorizes the submission of claims to a regional transportation planning agency for the funding of projects exclusively for the benefit and/or use of pedestrians and bicyclists; and

WHEREAS, the Metropolitan Transportation Commission (MTC), as the regional transportation planning agency for the San Francisco Bay region, has adopted MTC Resolution No. 4108, entitled "Transportation Development Act, Article 3, Pedestrian and Bicycle Projects," which delineates procedures and criteria for submission of requests for the allocation of "TDA Article 3" funding; and

WHEREAS, MTC Resolution No. 4108 requires that requests for the allocation of TDA Article 3 funding be submitted as part of a single, countywide coordinated claim from each county in the San Francisco Bay region; and

WHEREAS, the City of El Cerrito desires to submit a request to MTC for the allocation of TDA Article 3 funds to support the project described in Attachment B to this resolution, which is for the exclusive benefit and/or use of pedestrians and/or bicyclists.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of El Cerrito declares it is eligible to request an allocation of TDA Article 3 funds pursuant to Section 99234 of the Public Utilities Code.

BE IT FUTHER RESOLVED, that there is no pending or threatened litigation that might adversely affect the project described in Attachment B to this resolution, or that might impair the ability of the City of El Cerrito to carry out the project.

BE IT FURTHER RESOLVED, that the project has been reviewed by the Countywide Bicycle Advisory Committee (BAC) and has been approved by MTC to use the Countywide BAC and the Countywide BAC provides for expanded representation of the City of El Cerrito and the designated representative is familiar with the bicycle and pedestrian needs of the City of El Cerrito.

BE IT FURTHER RESOLVED, that the City of El Cerrito attests to the accuracy of and approves the statements in Attachment A to this resolution.

BE IT FURTHER RESOLVED, that a certified copy of this resolution and its attachments, and any accompanying supporting materials shall be forwarded to the congestion management agency, countywide transportation planning agency, or county

Agenda Item No. 5(D)

Attachment 1

association of governments, as the case may be, of City of El Cerrito for submission to MTC as part of the countywide coordinated TDA Article 3 claim.

I CERTIFY that at a regular meeting on February 2, 2016, the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor Pro Tem

Resolution No. 2016-XX

Attachment A

Re: Request to the Metropolitan Transportation Commission for the Allocation of Fiscal Year 2016/2017 Transportation Development Act Article 3 Pedestrian/Bicycle Project Funding

Findings

Page 1 of 1

1. That the City of El Cerrito is not legally impeded from submitting a request to the Metropolitan Transportation Commission for the allocation of Transportation Development Act (TDA) Article 3 funds, nor is the City of El Cerrito legally impeded from undertaking the project(s) described in “Attachment B” of this resolution.
2. That the City of El Cerrito has committed adequate staffing resources to complete the project(s) described in Attachment B.
3. A review of the project(s) described in Attachment B has resulted in the consideration of all pertinent matters, including those related to environmental and right-of-way permits and clearances, attendant to the successful completion of the project(s).
4. Issues attendant to securing environmental and right-of-way permits and clearances for the projects described in Attachment B have been reviewed and will be concluded in a manner and on a schedule that will not jeopardize the deadline for the use of the TDA funds being requested.
5. That the project(s) described in Attachment B comply with the requirements of the California Environmental Quality Act (CEQA, Public Resources Code Sections 21000 et seq.).
6. That as portrayed in the budgetary description(s) of the project(s) in Attachment B, the sources of funding other than TDA are assured and adequate for completion of the project(s).
7. That the project(s) described in Attachment B are for capital construction and/or design engineering; and/or for the maintenance of a Class I bikeway which is closed to motorized traffic; and/or for the purposes of restriping Class II bicycle lanes; and/or for the development or support of a bicycle safety education program; and/or for the development of a comprehensive bicycle and/or pedestrian facilities plan, and an allocation of TDA Article 3 funding for such a plan has not been received by the City of El Cerrito within the prior five fiscal years.
8. That the project(s) described in Attachment B is included in a locally approved bicycle, pedestrian, transit, multimodal, complete streets, or other relevant plan, or similar draft final plan which the local governing body has reviewed and provided comments.
9. That any project described in Attachment B that is a bikeway meets the mandatory minimum safety design criteria published in Chapter 1000 of the California Highway Design Manual.
10. That the project(s) described in Attachment B will be completed before the funds expire.
11. That the City of El Cerrito agrees to maintain, or provide for the maintenance of, the project(s) and facilities described in Attachment B, for the benefit of and use by the public.

Resolution No. 2016-XX

Attachment B

Page 1 of 2

TDA Article 3 Project Application Form

Fiscal Year of this Claim: 2016/17

Applicant: City of El Cerrito

Contact person: Yvetteh Ortiz, Public Works Director/City Engineer

Mailing Address: 10890 San Pablo Avenue El Cerrito, CA 94530

E-Mail Address: yortiz@ci.el-cerrito.ca.us

Telephone: 510.215.4382

Secondary Contact (in event primary not available) Melissa Tigbao, Engineering Manager/Senior Engineer

E-Mail Address: mtigbao@ci.el-cerrito.ca.us

Telephone: 510.215.4368

Short Title Description of Project: Korematsu Middle School, Safe Routes to School Improvements, Phase 1

Amount of claim: \$ 148,535

Functional Description of Project:

Korematsu Middle School is currently housed in a temporary campus, and a new campus several blocks away will open at the end of March 2016. The new campus is at the site of a former elementary school. Given the new middle school population, the amount of walking and biking to school is expected to increase. The City of El Cerrito is encouraging walking and biking as a mode of transportation to the new middle school campus in order to reduce typical automobile congestion around middle schools, as well as, to fulfill various goals of the City's Strategic Plan, Climate Action Plan, and Active Transportation Plan (currently under City Council review), which all support biking and walking as being practical, healthy, and environmentally-sustainable modes of transportation. The West Contra Costa Unified School District is also partnering with the City to identify needed improvements and communicate with the school community. In September 2015, the City and District held a joint meeting to discuss the surrounding neighborhood and school community concerns and ideas regarding traffic among other items.

This project implements the Phase 1 improvements identified in the Contra Costa Transportation Authority (CCTA) Safe Routes to School technical assistance for Korematsu Middle School. That technical assistance created a Walk & Roll to School Map and Traffic Control Plan that identified areas for enhanced school area traffic control and other improvements for walking routes to school based on the prior plans, efforts and meeting discussed above. Additionally, the Active Transportation Plan identifies this portion of Norvell Street and Schmidt Lane as a bicycle boulevard to support safe biking to the school. This project would implement pedestrian crosswalk improvements and portions of the bicycle boulevard in the immediate vicinity of the school to benefit the safety of students and encourage new walking and biking trips to the school. The project includes bicycle boulevard signing, striping, and traffic calming improvements on Norvell Street and Schmidt Lane between Potrero Avenue and Richmond Street (both are Class III bicycle routes) and crosswalk improvements at Richmond Street/Gladys Avenue, Richmond Street/Donal Avenue, Norvell Street/Gladys Avenue, Norvell Street/Donal Avenue, Navellier Street/Gladys Avenue, Potrero Avenue/Navellier Street, Norvell Street/Schmidt Lane, Lawrence Street/Gladys Avenue, and Lawrence Street/Donal Avenue. Specific project components include enhanced traffic control devices (stop signs, school crossing signs, stop pavement legends, advanced stop bars, and "slow school crossing" legends), crosswalk enhancements (high visibility crosswalks, striping of missing crosswalks, raised crosswalk, and striped bulbouts with 8" pavement markers), traffic calming elements (speed humps, splitter islands/ "chokers", raised crosswalk), and bicycle boulevard improvements (sharrows, bicycle boulevard signing, wayfinding).

The walking and biking routes include crossings of the following collector and minor arterial roadways: Richmond Street with 6,250 vehicles per day and 31 mph 85-th percentile speed (2012) prior to the new school; Potrero Ave with existing 2,920 vehicles per day, 32 mph 85-th percentile speed (2012) prior to the new school; and Navellier St with existing 3,000 vehicles per day, 28 mph 85-th percentile (2015) prior to the new school. Norvell Street on which the bicycle boulevard is proposed is a relatively wide, 40-foot local resident street, and carried 800 to 1,200 vehicles a day prior to the new school. The traffic volumes are expected to grow when the new school opens at the end of March 2016, thus increasing the need for the proposed improvements.

Refer to attachments including Project Vicinity and Location Maps, Project Site Map; September 2015 Meeting Summary; Existing Conditions Photos; Active Transportation Plan Excerpts; Safe Routes to School Improvement Map & Layouts and Preliminary Cost Estimate.

Financial Plan:

List the project elements for which TDA funding is being requested (e.g., planning, engineering, construction, contingency). Use the table below to show the project budget for the phase being funded or total project. Include prior and proposed

Resolution No. 2016-XX

Attachment B

Page 2 of 2

future funding of the project. Planning funds may only be used for comprehensive bicycle and pedestrian plans. Project level planning is not an eligible use of TDA Article 3.

Project Elements: This project includes both engineering/design services provided by a consultant and construction by a contractor.

Funding Source	All Prior FYs	Application FY	Next FY	Following FYs	Totals
TDA Article 3		\$148,535			\$148,535
list all other sources:					
1. CCTA Technical Assistance Planning	\$15,000				\$15,000
2. City Gas Tax, Prelim Engineering	\$5,000				\$5,000
3. City Gas Tax, Signing & Striping	\$7,000	\$6,458			\$13,458
4. City Various, Admin/Proj Manag					
Totals	\$27,000	\$154,993			\$181,993

Project Eligibility:	YES?/NO?
A. Has the project been approved by the claimant's governing body? (If "NO," provide the approximate date approval is anticipated).	No - February 2, 2016
B. Has this project previously received TDA Article 3 funding? If "YES," provide an explanation on a separate page.	No
C. For "bikeways," does the project meet Caltrans minimum safety design criteria pursuant to Chapter 1000 of the California Highway Design Manual? (Available on the internet via: http://www.dot.ca.gov).	Yes
D. Has the project been reviewed by a Bicycle Advisory Committee (BAC)? (If "NO," provide an explanation). Enter date the project was reviewed by the BAC: <u>Contra Costa County BAC, on 12/7/15.</u>	Yes
E. Has the public availability of the environmental compliance documentation for the project (pursuant to CEQA) been evidenced by the dated stamping of the document by the county clerk or county recorder? (required only for projects that include construction).	Yes
F. Will the project be completed before the allocation expires? Enter the anticipated completion date of project (month and year) <u>December 2016</u>	Yes
G. Have provisions been made by the claimant to maintain the project or facility, or has the claimant arranged for such maintenance by another agency?	Yes – City will maintain



AGENDA BILL

Agenda Item No. 5(E)

Date: February 2, 2016
To: El Cerrito City Council
From: Margaret Kavanaugh-Lynch, Development Services Manager
Subject: New Vehicle Purchase

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to enter into a purchase agreement with Albany Ford-Subaru in the amount of \$26,404 for the purchase of a 2016 Ford Escape to be used by the Community Development Department for building inspections.

BACKGROUND

The City's Procurement policy states that it is the policy of the City of El Cerrito to secure supplies, equipment and professional services at the lowest possible cost commensurate with quality needed, to exercise financial control over purchases, and to assure quality of purchases. This policy stipulates that the expenditure of funds over the amount of \$25,000 from a single vendor in a fiscal year must be approved by the City Council.

Although expenditures above \$25,000 typically require a competitive bidding process, the policy also states that exceptions can be made to this requirement whenever the City Council finds that an alternative process is necessary to serve the best interests of the City.

ANALYSIS

The Community Development Department currently uses two vehicles in daily building inspection work: a 1999 Ford Ranger pick-up truck and a 2000 Ford Explorer Sports Utility Vehicle. Both of these vehicles are nearing the end of their useable lives. In particular, the Ranger has been evaluated by staff and has been found to need a number of repairs in order to maintain road safety.

Staff considered a number of options for replacement of the Ford Ranger and concluded that a Sports Utility Vehicle (SUV) is the best kind of replacement vehicle because it offers the necessary room for the inspectors to carry their code books and protective gear. Additionally, the 4-wheel drive option and higher clearance from the ground allows better access to and from both dry and muddy job sites. The SUV also provides the City with a more versatile vehicle to use in the event of a disaster situation such as a major earthquake.

Agenda Item No. 5(E)

The criteria staff used in determining which source offered the best overall vehicle included: cost, distance to nearest dealer for service, time needed for delivery, and overall rating.

All of the choices were narrowed down to three finalists: El Cerrito Honda (RAV4), Albany Ford-Subaru (Escape) and the approved vendor list established by the State of California via the California Multiple Award Schedules (CMAS), which led to contacting a Chevrolet dealership in Winters, CA. (Equinox) to obtain a quote.

Dealer	Vehicle	Cost	Distance to Nearest Dealer for Service	Time Needed for Delivery
El Cerrito Honda	2015 RAV 4	\$28,525	¾ mile	No White vehicles in stock. Unresponsive regarding ordering.
Winters Chevrolet	2016 Equinox	\$24,119	5 mi. GMC dealer. 60 miles to selling dealership.	90 days
Albany Ford-Subaru	2016 Escape	\$26,404	1 mile	0 days

Based on the research completed, staff believes that the best interest of the City is served by purchasing the Ford Escape from Albany Ford. While slightly more expensive than the Equinox, the proximity of the dealership for maintenance and the immediate availability of a white-colored vehicle (to be consistent with other City vehicles) were determining factors in the decision. Staff notes that the gas mileage for the Escape was slightly better than the Equinox (in city) and the overall crash safety ratings for both vehicles were identical.

STRATEGIC PLAN CONSIDERATIONS

Purchase of a new vehicle would fulfill the City's Strategic Plan Goal A; Delivery of Exemplary Customer Service and Goal E: Ensure the Public's Health and Safety.

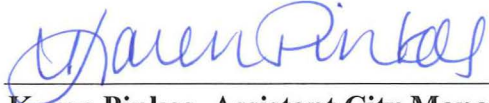
FINANCIAL CONSIDERATIONS

The total cost to purchase the vehicle is \$26,404. This includes the purchase price, tax and registration. Funding is available through an allocation to the Community Development Department's Fiscal Year 2015-16 budget.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the attached Resolution.

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. Resolution

RESOLUTION 2016--XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO ENTER INTO A PURCHASE AGREEMENT WITH ALBANY FORD-SUBARU IN THE AMOUNT OF \$26,404 FOR THE PURCHASE OF A NEW VEHICLE FOR THE COMMUNITY DEVELOPMENT DEPARTMENT

WHEREAS, the Community Development Department uses two vehicles to conduct building inspection services; and

WHEREAS, the existing vehicles are nearing the end of their usable lives; and

WHEREAS, the City's Procurement policy states that it is the policy of the City of El Cerrito to secure supplies, equipment and professional services at the lowest possible cost commensurate with quality needed, to exercise financial control over purchases, and to assure quality of purchases; and

WHEREAS, the City's Procurement policy additionally stipulates that purchases of equipment requiring an expenditure over \$25,000.00 must be competitively bid, with exceptions for purchases made through cooperative purchasing arrangements with other governmental agencies, and that purchases made from a single vendor over \$25,000 in one fiscal year must be approved by City Council; and

WHEREAS, in addition to cost, staff used distance to nearest dealer for service, time needed for delivery, and overall quality rating as the criteria to ensure the equipment would be of high quality and provide the best overall purchase value; and

WHEREAS, through an informal bid process, staff has identified a 2016 Ford Escape from Albany Ford-Subaru that meets all the needed criteria; and

WHEREAS, staff does not believe that competitively bidding this purchase would serve the best interests of the City because of the urgent need to replace an unsafe vehicle, the need to guarantee quality of the new vehicle, and the need to ensure that dealer service is nearby; and

WHEREAS, staff has determined that the vehicle available through California Multiple Award Schedules (CMAS) does not serve the City's interests as well as the Ford Escape from Albany Ford-Subaru.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby:

1. Finds that an exception to the competitive bidding policy should be made to allow for the purchase of the 2016 Ford Escape to serve as a building inspection vehicle because this purchase is necessary to serve the best interests of the City; and

2. Authorizes the City Manager to enter into a purchase agreement with Albany Ford-Subaru in the amount of \$26,404 for the purchase of the vehicle.

Agenda Item No. 5(E)
Attachment 1

I CERTIFY that at a regular meeting on February 2, 2016, the City Council passed this resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor Pro Tem



AGENDA BILL

Agenda Item No. 5(F)

Date: February 2, 2016
To: El Cerrito City Council
From: Melanie Mintz, Community Development Director
Subject: Economic Development Committee Appointment

ACTION REQUESTED

Approve an Economic Development Committee recommendation to appoint Mark Figone to the Economic Development Committee.

BACKGROUND

An application to be appointed to the Economic Development Committee (EDC) was recently received from Mark Figone, who served on the Economic Development Committee in 2015 as the Chamber of Commerce appointee. During the Committee's meeting on January 27, the Committee voted to recommend to the City Council that Mark Figone be appointed to the Economic Development Committee.

Mr. Figone has been the CEO of East Bay Sanitary Company since 2005, a 75-year-old family-owned El Cerrito business providing waste collection services to every resident and business in El Cerrito. He has also served on the Waste Management Task Force during AB 939 implementation and is currently a member and past president of the El Cerrito Rotary Club. He has demonstrated through his application and prior service to the EDC that he is committed to economic prosperity and community in keeping with the mission of the Committee. With a Master of Business Administration and Bachelor of Science in Environmental Science, Mr. Figone has the skills and enthusiasm required to support the activities of the Committee.

If the City Council approves this recommendation, the number of Committee members will be 9. Resolution 2013-66 establishes the maximum committee size at 15.

Reviewed by:

Karen Pinkos, Assistant City Manager

Attachment:

1. Figone Application



**February 2, 2016
Regular City Council Meeting**

**Agenda Item No. 5(F)
Economic Development Committee Appointment
Attachment 1 Application**

Hardcopy is available for review at:

Office of the City Clerk
10890 San Pablo Avenue
El Cerrito, CA
(510) 215-4305

and

The El Cerrito Library
6510 Stockton Avenue
El Cerrito, CA



AGENDA BILL

Agenda Item No. 6

Date: February 2, 2016
To: El Cerrito City Council
From: Margaret Kavanaugh-Lynch, Development Services Manager
Subject: Extension of Massage Establishment Moratorium

ACTION REQUESTED

Conduct a public hearing and upon conclusion adopt the attached interim urgency ordinance making findings and extending a temporary moratorium on the establishment or relocation of new and existing massage establishments for twelve months to become effective upon the expiration of the current moratorium.

BACKGROUND

Assembly Bill 1147, which became effective January 1, 2015, amended the California Business and Professions Code to return land use authority over all massage establishments to cities. The City Council adopted Ordinance No. 2015-04 on April 7, 2015 temporarily suspending the issuance of any permits to new or existing massage establishments in the City. This allowed staff additional time to study and plan an approach to massage regulation following the Governor's approval of Assembly Bill 1147. Since the adoption of the initial moratorium ordinance, staff has been reviewing the new law and researching other possible regulatory schemes to update the City's municipal and zoning codes. While significant progress has been made, additional time is needed to complete the task.

ANALYSIS

Pursuant to Government Code Section 65858, the City may extend a moratorium, by a four-fifths vote, when the ordinance contains legislative findings that there still exists a threat to the public health, safety and welfare. The extension of the moratorium will allow the City more time to: (1) Address concerns regarding the establishment and operation of all massage establishments, (2) Study the potential impacts massage establishments may have on the residents' public health, safety and welfare, (3) Study and determine what local regulations may be appropriate or necessary for massage establishments, (4) Study and determine the appropriate zoning and location for massage establishments, and (5) Consider appropriate controls for protection of public health and welfare.

Staff and the City Attorney have prepared the attached extension ordinance for the City Council's consideration. The ordinance would extend the temporary moratorium on the issuance of business licenses or building permits for massage establishments and the

Agenda Item No. 6

relocation of existing massage establishments for twelve months. Like Ordinance No. 2015-04, the moratorium would not prohibit:

- The renewal of a business license for an existing massage establishment that seeks to maintain the massage establishment in its current location, in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws
- Issuance of permits for emergency and emergency-related repairs
- Massage establishments operated as Home Occupations
- Persons engaged as: (a) physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) employed at hospitals, nursing homes, sanitariums, or any other health facility licensed by the state; (c) coaches or trainers acting within the scope of their employment at accredited schools, and (d) trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and working in conjunction with a specific athletic event

The moratorium extension will be effective for twelve months starting from the date of the expiration of the current moratorium, February 22, 2015, and according to state law is the last allowable extension. The act of adopting the moratorium is not a review or determination on the merits of allowing such use or not; instead, it allows the City additional time to study the issue.

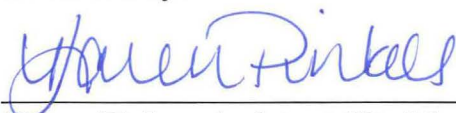
STRATEGIC PLAN CONSIDERATIONS

Adoption of the Massage Establishment moratorium would fulfill the City's Strategic Plan Goal E: Ensure the public's health and safety.

LEGAL CONSIDERATIONS

The City Attorney drafted the attached extension ordinance.

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. Urgency Ordinance

ORDINANCE NO. 2016–XX

AN URGENCY ORDINANCE OF THE CITY OF EL CERRITO MAKING FINDINGS AND EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OR RELOCATION OF NEW AND EXISTING MASSAGE ESTABLISHMENTS FOR TWELVE MONTHS TO BECOME EFFECTIVE UPON THE EXPIRATION OF THE CURRENT MORATORIUM

WHEREAS, on February 17, 2015, the City Council adopted Ordinance 2015-03 imposing a 45-day moratorium on the establishment or relocation of new and existing massage establishments and on the issuance of building permits or business licenses to massage establishments; and

WHEREAS, on April 7, 2015, the City Council adopted Ordinance No. 2015-04 extending the temporary moratorium by 10 months, 15 days, on the establishment or relocation of new and existing massage establishments and on the issuance of building permits or business licenses to massage establishments; and

WHEREAS, Government Code Section 65858 authorizes the extension of an urgency ordinance, after a noticed public hearing, to prohibit uses of land which may conflict with a contemplated general plan, specific plan or zoning proposal which the legislative body, planning commission or the planning department is considering or studying, or intends to study, within a reasonable period of time; and

WHEREAS, City staff are currently in the process of studying the possible adoption of new regulations applicable to massage establishments in the City; and

WHEREAS, Government Code Section 65858, subdivision (a) provides that the legislative body of a city may, to protect the public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal the City Council is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended a maximum of two times for a total duration of two years; and

WHEREAS, the City desires to address community concerns regarding the establishment and operation of massage establishments within the City and intends to (1) study the potential impacts massage establishments may have on the public health, safety and welfare, (2) determine what local regulations, including but not limited to zoning regulations, may be appropriate to limit the negative impacts of massage establishments, and (3) determine appropriate controls for the protection of public health, safety and welfare; and

WHEREAS, the City will take steps to update its Municipal Code and Zoning Code to ensure that the City's laws are consistent with the goals, policies and standards of the General Plan and the goals of the City Council to protect the public health, safety, and welfare; and

WHEREAS, the City seeks to extend the moratorium on the issuance of permits to massage establishments to provide the City time to study and plan its approach to massage regulation following the Governor's approval of Assembly Bill 1147; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following:

- (1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.
- (2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.
- (3) This ordinance is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b) (3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The above recitals are hereby declared to be true and correct and findings of the City Council of the City of El Cerrito.

In addition, after consideration of all evidence presented and testimony received at the February 17, 2015, April 7, 2015 and February 2, 2016 public hearings, the City Council finds that:

1. The threat to the public health, safety and welfare, as described in the findings adopted pursuant to Ordinance No. 2015-03 still exists.
2. Without proper regulation, the establishment and operation of additional massage establishment in locations within the City will result in harmful effects to the businesses, property owners and residents of the City, and illegal establishments that are unlawfully holding themselves out as massage businesses, and improperly operated massage establishments, may have serious objectionable impacts on the health, safety and welfare of the residents of the City.

SECTION 2. MORATORIUM EXTENDED.

A. Scope. In accordance with the authority granted to the City of El Cerrito under Article XI, Section 7 of the California Constitution and California Government Code section 65858, the

moratorium imposed by Ordinance 2015-04 shall hereby be extended for twelve months from and after the date that Ordinance 2015-04 expired. For the purposes of this ordinance, “massage establishment” shall have the same meaning as in section 8.10.010 of the Municipal Code. During the term of this extension:

1. No person, partnership, corporation, or other entity shall commence doing business as, or operations of, a massage establishment, nor shall a business license or operator’s permit be issued to a massage establishment owner unless specifically excluded herein.
 2. No building permit shall be issued pursuant to Title 16 of the El Cerrito Municipal Code for the construction of a new building or the modification of an existing building for use as a massage establishment.
 3. If a business license or permit to operate has been issued but the business has not yet initiated operation prior to the effective date of this ordinance, then the business may seek a refund for business license tax paid.
- B. Exceptions. This moratorium as extended shall not prohibit the following: 1) the renewal of a business license for an existing massage establishment provided that the renewal seeks to maintain the massage establishment in its current location, and the massage establishment is operating in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws; 2) massage establishments operated as home occupations in accordance with the El Cerrito Municipal Code; 3) the issuance of permits for emergency or emergency-related repairs; and 4) persons engaged as follows: (a) physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) employed at hospitals, nursing homes, sanitariums, or any other health facility licensed by the state; (c) coaches or trainers acting within the scope of their employment at accredited schools, and (d) trainers of amateur, semiprofessional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and trains working in conjunction with a specific athletic event.
- C. Statutory Findings and Purpose. This extension ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council as set forth in Section 1 of this ordinance, and the additional information set forth below:
1. The purpose of this ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the establishment or relocation of new and existing massage establishments within the City of El Cerrito, in light of the State Legislature’s passage of Assembly Bill 1147 which reinstates significant local control over massage establishments to local jurisdictions, until such reasonable time as a detailed study of the possible adverse impacts such establishments might have on commercial and residential uses and the general public health, safety, and welfare. The facts constituting the urgency are: a) Cities throughout California, including neighboring cities, have received complaints regarding illicit activity occurring at massage establishments; b) there are no existing

regulations within the City of El Cerrito that address the location of California Massage Therapy Council (“CAMTC”) certified massage establishments, and massage operations, which are near potentially sensitive areas throughout the City; c) such locations can be particularly sensitive to potential harmful effects of massage establishments; d) as applications for business licenses are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance; e) unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and f) the State Legislature recently passed Assembly Bill 1147, which became law on January 1, 2015, and which changes the state statutory structure for local regulation of massage establishments and practitioners.

2. Absent the extension of the urgency ordinance, the establishment and operation of massage establishments in the City would result in the harmful secondary effects identified above.
3. It is necessary to study the possible adoption of amendments to the City’s Municipal Code and Zoning Code in order to adopt legislation pursuant to the return of local land use control over massage establishments authorized by Assembly Bill 1147.
4. Issuing business licenses or building permits for new or relocating massage establishments prior to the completion of the City’s study of the potential impact of such facilities poses a current and immediate threat to the public health, safety, and welfare.
5. In light of the harmful secondary effects associated with massage establishments and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary, in accordance with Government Code Section 65858, to extend a moratorium on the issuance of entitlements for and the establishment or relocation of massage establishments in the City to provide time for the City Council to further evaluate and consider possible adoption of legislation, guidelines and/or policies as required to avert the potential impacts of massage establishments.

SECTION 5. Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of El Cerrito hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Effective Date.

This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall extend the moratorium immediately

from and after the date that Ordinance 2015-04 expired for twelve months therefrom in accordance with California Government Code Section 65858.

Adopted and ordered published at a regular meeting of the City Council held on _____, by the following vote of the City Council:

AYES:
NOES:
ABSENT:

APPROVED:

Janet Abelson, Mayor Pro Tem

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2016.

Cheryl Morse, City Clerk



AGENDA BILL

Agenda Item No. 7

Date: February 2, 2016
To: El Cerrito City Council
From: Suzanne Iarla, Assistant to the City Manager
Subject: Establishing a City Council Subcommittee and a Task Force to Plan for the City's Centennial Celebration

ACTION REQUESTED

Staff requests that Council take the following actions:

1. Adopt a resolution establishing the Centennial Celebration Planning Task Force, an advisory body charged with making recommendations to the City Council regarding events and activities to carry out in 2017 to celebrate El Cerrito's 100 year history as an incorporated city; and
2. Establish a Council Subcommittee comprised of the Mayor and Mayor Pro Tem to work with the Centennial Celebration Planning Task Force.

BACKGROUND

In the City's Strategic Plan (adopted in 2013 and updated in 2015), the City Council identified the objective to "Develop plans for the City's 100th year anniversary" as a strategy to help achieve the City's goal to "Deepen a sense of place and community identity."

El Cerrito incorporated as a City on August 23, 1917, after a "spirited" vote by the residents of the un-incorporated areas of Stege Junction (near San Pablo and Potrero Avenues) and Rust. Two other small communities were also included in the new town: Schmidville (which was centered around Schmidt Lane) and Schindler (the area near today's Fairmount Ave. and Richmond St.), giving El Cerrito an estimated initial population of 1,400.

In 2017, the City will celebrate its 100th anniversary as a city. Our rich history has contributed to the City's identity and quality of life, and there is much to be proud of.

In order to gather, prioritize and articulate ideas on how best to mark and celebrate El Cerrito's proud history, staff is proposing a process to engage the community in planning for the celebration. The proposed process and timeframe is outlined in Attachment 2.

ANALYSIS

Council Subcommittee

From time to time, the City Council has created a subcommittee to work on a specific issue, program or plan. The Centennial Celebration Planning subcommittee would provide input and guidance to both staff and the Task Force on this topic.

Task Force

The City currently has a number of standing boards, commissions and committees that provide advice and support on specific subjects. The City Council has the ability to establish a task force to convene for a limited period of time to work on a specific objective, in this case, to make a recommendation to the Council on how to celebrate the cityhood centennial in 2017. The task force would collect and prioritize ideas from the whole community, then develop a proposal and make a recommendation to the City Council regarding the Centennial Celebration.

Staff would develop an application form similar the form used for other advisory bodies. The Council would review the applications and appoint 7 to 10 people to serve on the Task Force. The appointed Task Force members would then work with staff and the subcommittee to carry out their tasks. Task Force meetings will be open to the public.

STRATEGIC PLAN CONSIDERATIONS

Taking steps to plan for the City to mark and celebrate its centennial helps to fulfill the specific strategy identified in the Strategic Plan towards achieving the goal to “Deepen a sense of place and community identity.”

FINANCIAL CONSIDERATIONS

There may be minimal costs associated with the Task Force, such as purchasing standard office supplies and printing that can be absorbed within the City Manager’s Office existing budget appropriations.

In the Spring of 2016, the City Council would consider the Task Force’s recommendations and appropriate funds for centennial celebration events and activities as part of the normal budget deliberation process for Fiscal Year 2016-17.

LEGAL CONSIDERATIONS

None at this time.

Reviewed by:



Karen Pinkos, Assistant City Manager

Attachments:

1. Resolution
2. Proposed Centennial Planning Process Timeline

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO CREATING THE
CENTENNIAL CELEBRATION PLANNING TASK FORCE

WHEREAS, El Cerrito incorporated as a City on August 23, 1917, and

WHEREAS, in 2017, the City will celebrate its 100th anniversary as a city, and our rich history has contributed to the City's identity and quality of life; and

WHEREAS, in the City's Strategic Plan, the City Council identified the objective to "Develop plans for the City's 100th year anniversary" as a strategy to help achieve the City's goal to "Deepen a sense of place and community identity"; and

WHEREAS, the City Council intends to engage the community in planning for the celebration.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby establishes a Centennial Celebration Planning Task Force, with the necessary staff liaison assigned by the City Manager, with the following duties and responsibilities:

- 1) To serve in an advisory capacity to the City Council, staff, other boards, commissions, and committees, and the residents of the City with regard to the Centennial Celebration within the City of El Cerrito;
- 2) To collect and prioritize ideas from the whole community, develop proposals and make recommendations to the City Council regarding the Centennial Celebration; and
- 3) To assist, as needed, with the implementation of the Centennial Celebration plans once approved by the City Council.

BE IT FURTHER RESOLVED, that this Task Force shall be open to all El Cerrito residents and representatives of El Cerrito businesses with knowledge of, interest in, and/or involvement in the Centennial Celebration; and that the Council's intention is to appoint an initial group of seven to ten individuals to serve as members of the Task Force.

BE IT FURTHER RESOLVED, that this Task Force will dissolve upon conclusion of its mission and duties as determined by the City Council.

I CERTIFY that at a regular meeting on February 2, 2016, the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:

NOES:

ABSENT:

Agenda Item No. 7
Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on February X, 2016.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor Pro Tem

Proposed - Centennial Planning Process Timeline

1. Council Establish Subcommittee and Task Force – Tuesday, February 2

2. Initial Brainstorming Workshop – Thursday, February 11

Invite all current advisory board members and representatives from each co-sponsored group to attend initial brainstorming workshop

- Develop list of ideas
- Ask attendees to spread the word about getting involved

3. Online Community Input (February)

- Upload ideas from brainstorming workshop to “Open El Cerrito”
- Allow community members to “like”, comment, and add their own ideas
- Structure the entries to include: Title, Brief Description, Budget Range, Time, Frequency

4. Council Appoint Task Force (March)

- Council select and appoint 7 to 10 people to the working group

5. Convene Staff Committee

- February: solicit ideas from City employees; post ideas on “Open El Cerrito”
- March-April: Meet with Task Force; give input and help to solidify ideas

6. Convene Task Force

- Mid-March: Review submissions, select top choices
- Early April: Refine, elaborate and develop realistic expense estimates
- Mid-April: Work with staff on logistics such as estimated staff time required, resources available, etc.
- Late April/May: Make recommendation including a budget appropriation for FY 2016-17.

7. Submit Recommendation to Council

As part of budget process, estimated in May 2016