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OFFICE OF THE CITY CLERK  
OAKLAND

2017 JUN 28 PM 4:01

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Michele Byrd,  
Director, HCDD

**SUBJECT:** Brooklyn Basin Affordable Housing  
Parcels: Authorizing Partial Sale to,  
and Joint Ownership Agreement with  
the Oakland Housing Authority

**DATE:** June 15, 2017

City Administrator Approval

Date:

*[Handwritten signature]*  
*6/28/17*

## RECOMMENDATION

**Staff Recommends That The City Council Adopt An Ordinance Authorizing (1) The Sale of an Undivided 50 Percent Interest in the Affordable Housing Parcels at Brooklyn Basin to the Oakland Housing Authority for a Purchase Price of \$10 Million, and (2) A Joint Ownership Agreement with the Oakland Housing Authority or Affiliate Governing the Joint Ownership, Disposition and Operation of the Property.**

## EXECUTIVE SUMMARY

In August 2014, in accordance with the City's 2006 Development Agreement (DA) with master Brooklyn Basin developer Zarsion-OHP I, LLC (ZOHP) and the Cooperation Agreement with the Oak to Ninth Community Benefits Coalition, the City purchased Brooklyn Basin Parcels F and G from ZOHP for the purpose of developing affordable housing at the project site. In 2015, ZOHP selected, and the City Administrator subsequently approved, MidPen Housing Corporation (MidPen) as the affordable housing developer for the project.

The 2006 DA required the affordable housing developer to build 400 public parking spaces and 42,000 square feet of commercial space as separate condo developments on Parcel G (in addition to the affordable housing units), with the parking/retail condominiums then turned over to ZOHP on a reimbursement basis. ZOHP has since proposed swapping Parcel G for an adjacent parcel, Parcel A, which will eliminate having the affordable housing developer need to take on a commercial/parking development in addition to the affordable housing units, and allow ZOHP to control development at the gateway to the overall development. The parcel swap, approved by City Council in January 2017, is in process as of the writing of this staff report, and is expected to have concluded by the time this report reaches City Council.

The City and MidPen have been in discussions with the Oakland Housing Authority (OHA) regarding bringing OHA on as co-owners of the site. OHA brings to the table \$10 million in funds, and an estimated 258 Project Based Section 8 (PBS8) vouchers to provide operating support and the ability to provide more deeply affordable units at Brooklyn Basin, in exchange

Item: \_\_\_\_\_  
CED Committee  
July 11, 2017

for a 50 percent ownership interest in the property. The City will loan the net sales proceeds from the transaction with OHA back to the project. As part of the sale/purchase process, the City and OHA will enter into a Joint Ownership Agreement in order to govern both parties' ownership, disposition and operating rights and responsibilities with regards to the property. Due to uncertainties with the federal funding climate, OHA is keen to close this deal prior to the end of the federal fiscal year on September 30, 2017. This fall, staff anticipates returning to Council for authorization to enter into agreements between the City, OHA and MidPen for the disposition of land to MidPen and funding of the project.

## **BACKGROUND / LEGISLATIVE HISTORY**

### **Project Description and Affordable Housing Requirement**

The Brooklyn Basin project (formerly known as the Oak to Ninth project) is a large-scale development project on a formerly-industrial site along Oakland's waterfront. When fully developed, the project will comprise approximately 3,100 housing units, over 200,000 square feet in retail space, 29.9 acres of parks and public open space, two renovated marinas and restoration of an existing wetland area.

In 2006, the developer of the project (then known as Oakland Harbor Partners), the City, and the Redevelopment Agency entered into a DA for the project. The City negotiated a variety of community benefits provisions into the DA, including provisions for on-site affordable housing development. The DA required the Redevelopment Agency to purchase two parcels (then Parcels F and G) from the developer and to develop 465 units of housing affordable to low income households on those parcels. The affordable housing would be developed in phases as part of the overall project according to a schedule set forth in the DA. Oakland Harbor Partners agreed to sell the affordable housing parcels at a discount and to contribute \$2 million toward development of affordable housing on those parcels.

Parallel to negotiations with the developer over the DA, the Redevelopment Agency negotiated a "Cooperation Agreement" with a coalition of community groups, known as the Oak to Ninth Community Benefits Coalition (the "Coalition"), over the level of community benefits that would result from the project, including affordable housing development. The Cooperation Agreement was executed in 2006. Consistent with the DA, the Cooperation Agreement required the Redevelopment Agency to purchase the affordable housing parcels and ensure that at least 465 affordable housing units are developed as part of the overall development.

### **Delay and Subsequent Changes to Affordable Housing Requirements**

Shortly after the DA and the Cooperation Agreement were originally signed, the Brooklyn Basin project was put on hold by the developer due to the economic downturn, and a legal challenge to the Project.

Upon dissolution of the Redevelopment Agency in 2012, the City retained and assumed the housing assets and functions of the Redevelopment Agency, including obligations related to affordable housing development at Brooklyn Basin.

Pursuant to the DA and the Cooperation Agreement, the City purchased Parcels F and G from ZOHP on August 28, 2014, for a purchase price of \$21,508,462 plus closing costs, with ZOHP obligated to conduct extensive environmental remediation, as well as infrastructure work on the property. The purchase price represented the appraised fair market value of the parcels, discounted by \$3,033,204 due to the early purchase. To fund the purchase, the City used proceeds from a housing bond issued by the Redevelopment Agency in 2011. Project funds totaling \$2,454,627 from this bond remained after the purchase of the parcels.

Current Status and Projected Affordable Housing Funding Sources

ZOHP has begun site preparation work on the first phase of the overall project, including the affordable housing parcels. The first market rate phase of the development, 241 units on Parcel B, started construction this spring.

In June 2015, ZOHP selected MidPen Housing Corporation, a nonprofit affordable housing developer with extensive development experience in the Bay Area, to be the developer for the affordable housing project, and the City Administrator approved this selection. The City has been working closely with MidPen, OHA and the Coalition since June 2015, as MidPen develops and refines its affordable housing development scenarios and financing plan.

On January 5, 2016, City Council approved Resolution No. 85939 C.M.S., which approved a financing plan for the affordable housing unit development, and approved the submittal of a petition to the California Department of Finance (DOF) for a Final and Conclusive Determination (FCD) that the City had an enforceable obligation under the DA and the Cooperation Agreement to fund development of 465 units of affordable housing on the affordable housing parcels. The City sought \$45 million in Real Property Tax Trust Funds (RPTTF), i.e., property tax funds that were formerly considered tax increment funds, as its contribution to develop the affordable housing.

Through negotiations with DOF, aided in large part by support from the Mayor's office and the members of the Coalition, DOF allowed the City to retroactively re-characterize previous draws from the 2011 Affordable Housing Set-Aside Bond Fund, for the affordable parcel purchase at Brooklyn Basin and the Mural Apartments affordable housing development at the MacArthur BART station, as RPTTF expenditures. This freed up \$35 million in 2011 Affordable Housing Bond Funds to support vertical construction of affordable housing development at Brooklyn Basin.

MidPen proposes building the required 465 units in four separate phases over a seven-year time frame. Per the terms of the Cooperation Agreement, 110 units will target seniors and the remaining 355 will target families. All units must be affordable to households earning 25 percent to 60 percent of Area Median Income. At least 30 percent of the units will be three-bedroom units and at least 20 percent of the units will be two-bedroom units.

On July 19, 2016, per City Council Resolution No. 86301 C.M.S., the City Council approved a \$360,000 predevelopment loan to support MidPen in their predevelopment activities for development on Parcel F, and that loan closed earlier this spring.

On January 17, 2017, City Council approved the parcel ownership swap per City Council Resolution No. 13413 C.M.S., and after a period of negotiations and due diligence research, staff expects that the parcel exchange transaction will be completed in late June.

Staff anticipates returning to Council this fall for authorization to enter into agreements between the City, OHA and MidPen for the disposition of land to MidPen via long-term ground leases and funding of the project.

### **ANALYSIS AND POLICY ALTERNATIVES**

The terms of the DA and Cooperation Agreement, set out extensive requirements for the affordable housing units in terms of depth of affordability, limits on senior units, and minimum number family-sized units (2 and 3 bedroom units). Although last year's favorable DOF decision provides substantial capital towards the development of the affordable units, this estimated \$35 million and land contribution costs of \$21.5 million represents about 23 percent the projected total development costs for the project, which are estimated at \$240 million for the 465 units. This gap is not unusual for affordable housing developments – the City's policy is to provide a maximum of 40 percent of total development costs, with developers expected to leverage the rest of funding with a variety of sources, including tax credits, other state and federal funding sources, and private loans to the extent that these are supported by cash flow. Given the large number of units involved here, figuring out ways to whittle down the funding gaps is imperative.

In addition, the requirement to have units serving 25 percent of AMI households requires cross-subsidization on the operating side. For example, typical operating costs for affordable rental developments are approximately \$7500 per unit per year before contributions to operating and replacement reserves, and any debt service on amortizing loans. Tenants in a 25 percent of AMI 2-bedroom unit with tenant-paid electric heating, cooking and lighting could be charged a net rent of roughly \$493 per month after the utility allowance, or \$5916 per year, a gap of nearly \$1600 per year per 25 percent AMI unit even before operating and replacement reserves and debt service are accounted for. With a Project Based Section 8 (PBS8) voucher, the net rent received for the same 2-bedroom unit would be \$1607 per month (tenant contribution of 30 percent of income – utility allowance + OHA payment), or \$19,284 per year. This higher rent amount allows for payment of operating expenses, reserves, debt service and use of revenue to pay for additional services and debt service for the property.

OHA has an extensive history with this type of partnership with affordable housing developers and/or the City, both in its HOPE VI revitalization efforts for its own public housing stock, and in numerous standalone projects throughout the City. OHA owns the land on such affordable housing developments as the Savoy Hotel (formerly the Jefferson and Oaks Hotels), Prosperity Place (11<sup>th</sup> and Jackson), and Ave Vista (Grand Avenue). In addition, the City and OHA have worked together to secure PBS8 vouchers in developments throughout the City through the City's competitive NOFA. Therefore, bringing on OHA as co-owner in the property provides substantial benefits to the projects and to residents, including: development capital of \$10 million, on-going development subsidies via the PBS8 vouchers, and on-going contributions to

project capital reserves and operating expenses for the affordable units over the long-term while allowing the property to serve some households at even lower incomes than were originally contemplated.

In addition to approving the disposition of a 50 percent interest in the property to OHA, City staff recommends entering into a Joint Operating Agreement (JOA) with OHA to set out the terms of the ownership partnership between OHA and the City. The JOA will set the terms for governing the ongoing management and operation of the property.

Without OHA involvement, the project's feasibility would be substantially impacted. Lost would be \$10 million in funds to support development of the affordable units, and PBS8 vouchers which would more deeply target affordability while simultaneously improving long-term project operations. Therefore, no other options were considered.

### **FISCAL IMPACT**

Since the City was already planning to retain ownership of the affordable housing parcels, with long-term ground lease to MidPen and their affiliates, this action will have minimal fiscal impacts. In addition, OHA's \$10 million purchase into the property will be rolled into additional development subsidies to help both lower the remaining funding gap in development costs, and provide additional local leverage that will improve the affordable projects' ability to compete for other funding sources.

In addition, the estimate 258 PBS8 vouchers will improve project operations over the long-term, while ensuring that the affordable units can effectively serve extremely low income tenants. With PBS8 vouchers, tenants pay 30 percent of their income towards their housing costs, with OHA making up the difference between that and the Fair Market Rent. Although the nominal maximum income for recipients is 50 percent of AMI, in practice the incomes served will be much lower.

### **PUBLIC OUTREACH / INTEREST**

The Coalition continues to be involved with this project since it negotiated the Cooperation Agreement with the City in 2006. The members of the Coalition are the Asian Pacific Environmental Network, East Bay Asian Youth Center, Oakland Community Organizations, and the Urban Strategies Council. City staff, the Coalition, OHA, and MidPen have been meeting frequently since June 2015 to discuss the affordable housing program and financing plan and the Coalition is an active participant in those discussions. The Coalition supports the involvement of OHA at the current level of PBS8 units.

## **COORDINATION**

Housing and Community Development staff coordinated with the City Attorney's Office, Controller's Bureau, the City Administrator's Office and MidPen Housing in preparation of this report. Staff also remains in frequent contact with the Real Estate division, Bureau of Planning and Building Department, and Public Works department's Environmental Services Division.

## **SUSTAINABLE OPPORTUNITIES**

**Economic:** The development of affordable housing at Brooklyn Basin will create economic opportunities through the provision of construction and property management employment opportunities. In addition, providing affordable housing, with a substantial portion of PBS8 units, will allow residents have greater financial security. Residents of affordable housing tend to spend their increased discretionary funds within their communities, which will also help local businesses.

**Environmental:** Environmental remediation of the affordable housing parcels has been completed and monitoring is occurring. Housing Staff will work with Public Works – Environmental Services Division staff on remediation issues and monitoring, and with Planning staff on NEPA review.

**Social Equity:** The development of affordable housing at Brooklyn Basin will create 465 affordable housing units for low and very low income residents, which is a means of achieving greater social equity. Units will serve lower incomes (regulated at 25-60 percent of AMI, but with vouchers that could allow residents in the 0-25 percent of AMI level as well). Affordable units will serve seniors and families, with large (3 bedroom) units that would otherwise be difficult to find in Oakland. Oakland's neighborhood-level environment will be improved by replacing vacant and underused lots with new homes and residents.

## **CEQA**

The City of Oakland Planning Commission certified the Oak to Ninth Avenue Project Environmental Impact Report on March 15, 2006. Under the California Environmental Quality Act (CEQA) Section 15162, no subsequent environmental review is required unless the project has changed substantially, the circumstances under which the project would occur have changed substantially, or new information demonstrates that any potential environmental impacts would be substantially more severe than previously demonstrated. In reviewing the preliminary affordable housing development and financing plan, staff has determined that none of the circumstances necessitating further environmental review are present. The reasons for this determination include, among others, the following: (1) the preliminary affordable housing development and financing plan does not affect development envelope previously reviewed in the EIR and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant

Item: \_\_\_\_\_  
CED Committee  
July 11, 2017

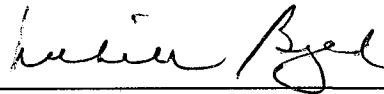
environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures. Accordingly, no further environmental review is required for this project at this time. The EIR identifies impacts and requires mitigation measures, and the proposed project will continue to be required to incorporate the mitigation measures. The EIR is available for review at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt An Ordinance Authorizing (1) The Sale of an Undivided 50 Percent Interest in the Affordable Housing Parcels at Brooklyn Basin to the Oakland Housing Authority for a Purchase Price of \$10 Million, and (2) A Joint Ownership Agreement with the Oakland Housing Authority or Affiliate Governing the Joint Ownership, Disposition and Operation of the Property

For questions regarding this report, please contact Christia Katz Mulvey, Housing Development Coordinator, at (510) 238-3623.

Respectfully submitted,



MICHELE BYRD

Director, Housing and Community Development

Reviewed by:

Norma W. Thompson, Housing Development  
Manager

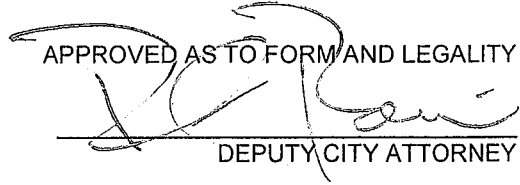
Prepared by:

Christia Katz Mulvey, Housing Development  
Coordinator, Housing Development Services

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2017 JUN 28 PM 4:35

APPROVED AS TO FORM AND LEGALITY

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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ORDINANCE AUTHORIZING (1) THE SALE OF AN UNDIVIDED 50 PERCENT INTEREST IN THE AFFORDABLE HOUSING PARCELS AT BROOKLYN BASIN TO THE OAKLAND HOUSING AUTHORITY OR AFFILIATE FOR A PURCHASE PRICE OF \$10 MILLION, AND (2) A JOINT OWNERSHIP AGREEMENT WITH THE OAKLAND HOUSING AUTHORITY OR AFFILIATE GOVERNING THE JOINT OWNERSHIP, DISPOSITION AND OPERATION OF THE PROPERTY

**WHEREAS**, in 2014 and 2017, the City acquired Project Parcels A and F (the "affordable housing parcels") at the Brooklyn Basin development project (formerly the Oak to 9<sup>th</sup> project) for the development of 465 units of affordable housing for a purchase price of \$21,508,462, and now holds sole fee ownership of the affordable housing parcels; and

**WHEREAS**, the Housing Authority of the City of Oakland, California ("OHA") has proposed purchasing an undivided 50 percent tenant-in-common interest in the affordable housing parcels for a purchase price of \$10 million; and

**WHEREAS**, the City and OHA as tenants-in-common plan to jointly convey the affordable housing parcels by long-term ground lease to a nonprofit housing developer subject to disposition and development agreements for phased development of affordable housing; and

**WHEREAS**, as a condition of the acquisition of an interest in the affordable housing parcels, OHA will commit to provide Project-Based Section 8 rental assistance vouchers for a portion of the developed units, subject to all HUD rules, regulations and conditions; and

**WHEREAS**, as a condition of the sale of an interest in the affordable housing parcels, the City will commit the net proceeds of the sale to development of affordable housing units on the affordable housing parcels; and



**WHEREAS**, Chapter 2.42, Article IV, of the Oakland Municipal Code authorizes the City to sell real property for development, including affordable housing development, by ordinance; and

**WHEREAS**, Section 2.42.180 of the Oakland Municipal Code authorizes the City to dispose of property at its fair reuse value as assessed based on the property's proposed development and use, prevailing market conditions, development climate at the time of disposition, and other economic and noneconomic factors, and requires findings to justify any below-market disposition; and

**WHEREAS**, California Government Code Section 6500, et seq., authorizes public agencies to enter into agreements for the joint exercise of powers common to both agencies; and

**WHEREAS**, the City and OHA intend to enter into a Joint Ownership Agreement under the authority of California Government Code Section 6500, et seq., to govern the joint ownership, management, operation, and disposition of the affordable housing parcels by the City and OHA; and

**WHEREAS**, the Environmental Impact Report for the Oak to Ninth Mixed Use Development Project prepared under the California Environmental Quality Act ("CEQA") and certified by the City Council in 2006 and recertified in 2009 (the "EIR") provides a project-level analysis of the environmental impacts of the Brooklyn Basin development project and supports all levels of approval necessary to implement the project; and

**WHEREAS**, the proposed transaction would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the transaction that have not already been analyzed in the EIR; now, therefore

The Council of the City of Oakland does ordain as follows:

**SECTION 1.** The City Council hereby authorizes the City to convey an undivided 50 percent interest in Brooklyn Basin Project Parcels A and F to OHA, or to an affiliated entity approved by the City Administrator, for a purchase price of \$10 million.

**SECTION 2.** The City Council hereby authorizes the City Administrator or her designee to negotiate and execute a purchase and sale agreement with OHA or affiliate for the conveyance consistent with the terms of this Ordinance, as well as negotiate and execute grant deeds and any other agreements or documents as necessary to effectuate the transaction.

**SECTION 3.** The City Council, pursuant to Oakland Municipal Code Section 2.42.170.B., hereby waives a competitive Notice of Development Opportunity ("NODO") process for disposition of a property interest in the affordable housing

parcels, and finds and determines that disposition of said property interest without a competitive NODO process is in the best interest of the City because of the City's commitment and desire to ensure affordable housing development on the site, OHA's experience and resources generally in developing affordable housing, and OHA's commitment to support affordable housing development on these parcels, including providing rental assistance in order to make affordable housing development economically feasible.

**SECTION 4.** The City Council hereby finds that the sale of a 50% interest in the affordable housing parcels to OHA for a price of \$10 million represents the fair reuse value of said property interest, given the commitment to ensure affordable housing development on the parcels and the financial subsidies that will be required in order to make such development economically feasible.

**SECTION 5.** The City Council hereby authorizes the City Administrator or her designee to negotiate and execute a Joint Ownership Agreement with OHA, or an affiliated entity approved by the City Administrator, to govern the joint ownership, management, operation, and disposition of the affordable housing parcels.

**SECTION 6.** The City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163, are present because of the transaction, in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3). The City Council further finds and determines, each as a separate and independent basis, that this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning), 15378(b)(5) (the exchange will not independently result in a physical change in the environment) and 15061(b)(3) (no significant effect on the environment). The City Administrator or her designee is hereby authorized to file a notice of determination with the Office of the Alameda County Recorder and the State Office of Planning and Research.

**SECTION 7.** The City Administrator or her designee is hereby authorized to take any other action necessary in furtherance of this transaction consistent with this Ordinance and its basic purposes.

**SECTION 8.** This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2017

**PASSED BY THE FOLLOWING VOTE:**

AYES-                    BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY,  
                                  GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
                                  LATONDA SIMMONS  
                                  City Clerk and Clerk of the Council  
                                  of the City of Oakland, California

*DL*

**ORDINANCE AUTHORIZING (1) THE SALE OF AN UNDIVIDED 50 PERCENT INTEREST IN THE AFFORDABLE HOUSING PARCELS AT BROOKLYN BASIN TO THE OAKLAND HOUSING AUTHORITY OR AFFILIATE FOR A PURCHASE PRICE OF \$10 MILLION, AND (2) A JOINT OWNERSHIP AGREEMENT WITH THE OAKLAND HOUSING AUTHORITY OR AFFILIATE GOVERNING THE JOINT OWNERSHIP, DISPOSITION AND OPERATION OF THE PROPERTY**

**NOTICE AND DIGEST**

This Ordinance authorizes the sale of a 50 percent interest in the affordable housing parcels at the Brooklyn Basin development to the Oakland Housing Authority for a purchase price of \$10 million. This Ordinance also authorizes the City to enter into a Joint Ownership Agreement with the Oakland Housing Authority governing the joint ownership, management, operation, and disposition of the affordable housing parcels. This Ordinance also makes associated findings with respect to the California Environmental Quality Act (CEQA).