

TRANSMITTAL

To: **THE COUNCIL**

Date: **06/23/20**

From: **THE MAYOR**

TRANSMITTED FOR YOUR CONSIDERATION. PLEASE SEE ATTACHED.



ERIC GARCETTI
Mayor

(Ana Guerrero) for



Eric Garcetti, Mayor
Rushmore D. Cervantes, General Manager

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Council File: 20-0148
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Honorable Eric Garcetti
Mayor, City of Los Angeles
Room 303, City Hall
200 N. Spring Street
Los Angeles, CA 90012

Attention: Heleen Ramirez, Legislative Coordinator

COUNCIL TRANSMITTAL: REPORT BACK FROM THE LOS ANGELES HOUSING + COMMUNITY INVESTMENT DEPARTMENT REGARDING VARIOUS PROPERTIES, INCLUDING HILLSIDE VILLA APARTMENTS AND GRAND PLAZA APARTMENTS IDENTIFIED IN COUNCIL DISTRICT 1, AND RECOMMENDATIONS FOR THE ACQUISITION OF HILLSIDE VILLA APARTMENTS THROUGH THE USE OF EMINENT DOMAIN TO PRESERVE AFFORDABLE HOUSING; AND ON THE REQUIRED PROCEDURES TO ACQUIRE THE PROPERTY

SUMMARY

In accordance with Executive Directive No. 3, the General Manager of the Los Angeles Housing + Community Investment Department (HCIDLA) respectfully requests that your office review and approve this transmittal and forward it to the City Council for further consideration. Through this transmittal, HCIDLA seeks approval and requests authority to negotiate and enter into the new agreement under the terms outlined on the preservation of Grand Plaza Apartments, and submits this report summarizing research and recommendations on the acquisition of Hillside Villa Apartments by eminent domain.

On May 17, 2019, Councilmember Gilbert A. Cedillo, 1st District, and Councilmember Herb J. Wesson, Jr., 10th District, filed a motion (C.F. No. 19-0521) requesting information regarding affordable housing preservation efforts in the City. HCIDLA has released a separate report back in response to that request, which includes strategies to identify, prioritize, and pursue preservation opportunities; provides citywide data on affordable housing projects expiring through calendar year 2024; summarizes outreach and education initiatives to further preservation efforts in the City; and identifies costs and funding sources that can be accessed to preserve at-risk affordable projects.

On January 31, 2020, Councilmember Cedillo filed a motion (C.F. No. 20-0148) to explore using eminent domain to acquire properties with expiring covenants, including Hillside Villa Apartments. On March 27,

2020, an amending motion was filed, which instructed HCIDLA, with the assistance of the City Attorney, to report back on recommendations for the acquisition of Hillside Villa Apartments through the use of eminent domain to preserve affordable housing for public use.

RECOMMENDATIONS

- I. That the Mayor review this transmittal and forward to the City Council for further action;
- II. That the City Council, subject to the approval of the Mayor:
 - A. AUTHORIZE the General Manager of HCIDLA, or designee, subject to review and approval of the City Attorney as to form, to negotiate and enter into a new regulatory agreement with the legal owner(s) of Grand Plaza, located at 601 North Grand Avenue, under the terms outlined;
 - B. AUTHORIZE the General Manager of HCIDLA, or designee, to execute subordination agreements of the City's financial commitment, wherein the City loan and regulatory agreements are subordinated to their respective conventional or municipally funded loans, as required;
 - C. AUTHORIZE the General Manager of HCIDLA, or designee, to allow the transfer of the City's financial commitment to a limited partnership or other legal entity formed solely for the purpose of owning and operating the project in accordance with City and Federal requirements;
 - D. Authorize the General Manager of the HCIDLA, or designee, to negotiate and execute amendment documents related to the preservation of the affordability of Grand Plaza, subject to review and approval of the City Attorney.

BACKGROUND

Grand Plaza Apartments

HCIDLA is in receipt of a proposal from the owners of Grand Plaza to extend the affordability of the property. The proposal would protect all the existing tenants for life and restrict most of the turnover rents for 30 years. The owners are not asking for any subsidy; however, one of the business points proposed to offset this action is to increase the rent paid by the 103 tenants that are Section 8 voucher holders to current Voucher Payment Standards (VPS). Proposed terms are outlined as follows:

- New 30-year regulatory agreement (note: project has no loans since they were foreclosed upon in the early stages of project operations);
- 100% of the property shall be leased solely to senior residents aged 62 years and over;
- All in-place tenants will be protected with a lifetime rent adjustment cap, which limits annual rent increases to the percentage change in HUD's Area Median Income;
- Owner will agree to maintain the property with not less than 20% (61) of the units rented as low-income units at 50% AMI. In addition, Owner will agree to maintain the property with an additional number not less than 60% (242) of the units rented as moderate-income units at 80% AMI. The definition of low-income units shall follow the rent and income restrictions and computations used in IRC Section 42; and,
- The remaining 20% of the Units will become unrestricted (except for the requirement to maintain senior tenancy) upon natural turnover vacancy. The Housing Authority of the City of Los Angeles (HACLA)

has agreed to the rent increases to meet current payment standards, pending third party verification of a rent comparability check.

Hillside Villa Apartments

On February 27, 2020, a meeting was held with Councilmember Cedillo, including staff from CD 1, HCIDLA, and representatives from the City Attorney's office to discuss invoking the use of eminent domain for Hillside Villa Apartments. Subsequently, there was a confidential report directed to CD 1, authored by the City Attorney, which provided the lead discussion on the matter and included recommendations for the acquisition. In summary, per CD 1 Senior Planning Deputy Gerald Gubatan, the report opined that the City does have legal authority to invoke the use of eminent domain to preserve affordable housing for public use with just compensation.

It is the opinion of the City Attorney's office that exercising eminent domain for the purpose of providing affordable housing for public use is appropriate. Therefore, it is recommended that the City invoke the use eminent domain to acquire Hillside Villa Apartments in an effort to prevent the displacement of tenants.

Procedures to Acquire a Property Through Eminent Domain

Below is a brief outline of the steps and general timeline that would allow the City to acquire an affordable housing property for the purpose of public use.

1. Retain a qualified appraiser to determine Fair Market Value (FMV). In addition, a public entity must comply with California Environmental Quality Act (CEQA) and obtain CEQA compliance on the property.
2. Send the owners a written "Notice of Intent to Appraise".
3. Engage appraiser to perform appraisal; review and approve appraisal.
4. Provide a written offer to purchase the property for what it deemed to be "just compensation" based on the fair market value as determined by the appraisal.
5. If a voluntary agreement is reached, payment will be made at a mutually acceptable time; if rejected, negotiation will commence.
6. If no agreement is reached, a Notice of Intent to Adopt a Resolution of Necessity is sent.
7. Hearing on adoption of Resolution of Necessity (RON) Ordinance.
8. Case sent to City Attorney's office to file a complaint.
9. Meet and confer with owner and opposing attorney on possession and use agreement.
10. Deposit the fair market value of the property with either the Court or special condemnation fund established through the state.

11. File a Motion for Order for Prejudgment Possession.
12. Hearing on Motion for Order for Prejudgment Possession; obtain Order for Prejudgment Possession (OIP).
13. If motion unopposed, order may be granted; if motion opposed, motion may be granted if a specific set of additional findings are supported.
14. Coordinate service of OIP with Notice to Vacate, if applicable.
15. Continue negotiations to settle costs of litigation.
16. If unable to settle, a trial date will be set, which could take up to a year from the date of the complaint.
17. Exchange of respective lists of expert witnesses and statements of valuation data; the City makes a final written offer and owner makes a final written demand before trial.
18. Approval of City Council that case is settled; Judgment in Condemnation and a Final Order of Condemnation can be filed.

Possession of Property Before FMV is Determined

In conjunction with filing the eminent domain lawsuit, the City may file a motion for prejudgment possession, and state the reasons why the City would need immediate possession. The City would need to make a deposit of the fair market value of the property with either the Court or a special fund for condemnation that has been established through the state at that time. The City's preferred method is to deposit funds with the state.

Identification of Funds to Initiate a Real Estate Appraisal

In order to make an offer of just compensation, the City must obtain an appraisal of the real property to be acquired. The appraisal should be performed by someone with expertise in the area of eminent domain.

The cost of the appraisal is expected to cost upwards of \$25,000. It has not yet been determined which City department's funds will be used. However, potential sources include but are not limited to AB 1290 (state funds).

Eminent Domain Practices in King County, WA

In order to help provide guidance to the City in this decision, HCIDLA has researched King County Housing Authority's approach to eminent domain and the context in which it made those decisions.

Over the past two and half years, the King County, Washington Housing Authority (KCHA) has either acquired, or authorized the acquisition of, six affordable housing properties in its jurisdiction, totaling over 1,000 housing units (KCHA; Cornwell 2019). The housing affordability crisis in King County, which encompasses the City of Seattle, prompted these actions (Cornwell 2019). These purchases were made possible by a combination of private financing, bond issuance and funding commitments from the Washington state government.

In early 2019, Microsoft Corporation, a tech giant located in the Seattle area, pledged a \$500 million investment to address homelessness and housing affordability across the Puget Sound region (Coleman and Rosenberg 2019). Sixty million dollars of that commitment was loaned to the KCHA at a below-market rate to help fund the acquisition of five of those properties (Cornwell 2019). Additionally, KCHA issued bonds for two loans in September 2019 totaling \$210 million from a financial services firm called KeyBanc Capital Markets, Inc. (KCHA 2019). KCHA also individually issued bonds to Key Government Finance, Inc. for loans on three of the apartment complexes. Each of the loans equaled in principal the amount of the purchase of its respective property. In total, KCHA has purchased a few affordable housing properties that together cost nearly \$240 million. In selecting which properties to purchase, KCHA prioritized properties that are along a mass transit corridor to fulfill its goal of providing affordable housing near transit (KCHA 2018).

Additionally, KCHA is receiving an infusion of state revenues to help address its affordability challenges. In August 2019, the King County Council authorized the appropriation of \$100 million of state sales and use tax revenue over 20 years to go towards affordable housing in King County (King County 2019).

As described above, large amounts of private financial support have enabled King County, Washington to pursue a robust eminent domain strategy. There are operators in this market that have access to capital but need to satisfy the needs of their institutional investors. Currently, KCHA is the only governmental entity that is using eminent domain as part of its strategy to preserve affordable housing. Their efforts have proven to be successful with the backing of corporate influx of capital and investor support.

FISCAL IMPACT

There is no impact to the General Fund.

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