



Agenda Report

File #: 19-0240

AGENDA REPORT REQUEST FOR CITY COUNCIL ACTION

DATE: 3/20/2019

TO: Honorable Mayor and City Council Members

FROM: Community Development Department

SUBJECT:

City Council consideration of the First Amendment to an Agreement and Deed Restriction between the City of Corona and Fullerton Magnolia Senior Apartments, L.P. dated May 5, 1998, for the operation of a senior citizen apartment complex located at 1910 Fullerton Avenue.

RECOMMENDED ACTION:

That the City Council approve the First Amendment to an Agreement and Deed Restriction between the City of Corona and Fullerton Magnolia Senior Apartments, L.P.

ANALYSIS:

The City of Corona and Fullerton-Magnolia Senior Apartments, L.P. entered into an Agreement and Deed Restriction for the property located at 1910 Fullerton Avenue on May 5, 1998. The Agreement was in response to the conditions of approval placed on Conditional Use Permit 97-18, approved by the Planning Commission on February 9, 1998, for the establishment of senior citizen housing consisting of 200 apartments. The conditions of approval required the developer of the project to record a deed restriction on the property that would restrict the operation to only senior citizen housing.

The senior citizen apartment complex is known as the Vintage Terrace Apartments. The apartments are financed with a Housing and Urban Development (HUD) loan through the federal government, which allows the units to be set aside as low income housing for senior citizens. The current financing on the property is good until Year 2038. The city's Housing Element of the General Plan also acknowledges Vintage Terrace as one of the city's assisted affordable housing developments for seniors.

The owner of the property is in the process of refinancing their HUD loan that would extend the affordability of the senior citizen housing for another 35 years. During this process, HUD discovered that the currently recorded Agreement and Deed Restriction did not exclude the two manager's units on the property. The Agreement specifically states that all units within the complex shall be restricted

to persons that are 55 years of age and older. The complex has two units set aside for on-site employees that manage and maintain the property. The employees are younger than 55 years of age; therefore, Section 1 of the Agreement was amended to exclude the two employee units from the age restriction. The amendment does not change the current operation or future operation of the apartment complex as the 198 units that are occupied today will remain age restricted units.

In connection with the owner's refinancing of their HUD loan, HUD is also insisting that certain other amendments to the Agreement be made to make it consistent with HUD's regulatory agreement recorded against the property. Specifically, HUD wants Section 6 of the Agreement, which allows the prevailing party in any litigation concerning the Agreement to recover its attorneys' fees, to be amended to limit the owner's obligation to pay attorneys' fees to the surplus cash generated from the Project during the term of the HUD loan. According to HUD's representative, HUD's regulatory agreement limits the owners ability to expend funds generated by the Project, other than surplus cash, on items such as attorneys' fees. Additionally, HUD wants to add Section 9 to the Agreement to provide that while HUD is not subject to the City's agreement, any subsequent owner of the property will continue to be responsible for being in compliance with this Agreement. According to HUD's representatives, these revisions are requested in lieu of requiring the City to subordinate its agreement to HUD's regulatory agreement. If the City were to subordinate to HUD's regulatory agreement, there is the possibility that a foreclosure could effectively eliminate the City's agreement and the requirement that the property continue to be used as a senior citizen housing development. Considering that the Project has been operated by the same owner for the past 20 years, staff believes that there is little risk to agreeing to HUD's requested revisions.

The above amendments were reviewed and approved as to form by the City Attorney. The amendment to the Agreement continues to protect the use of the property as senior housing, which is consistent with the original conditions of approval for the project at the time of its approval in 1998.

The first amendment to the Agreement and Deed Restriction is consistent with the city's General Plan goals to a) *promote and maintain a balance of housing types and corresponding affordability levels to provide for the community's needs for housing within all economic segments of the city*, and b) *to promote and preserve suitable and affordable housing for persons with special needs, including large families, single parent households, the disabled, and senior, and shelter for the homeless* because the Agreement and Deed Restriction continues to provide access to affordable housing and creates suitable and safe housing for the city's aging population.

COMMITTEE ACTION:

Not applicable.

STRATEGIC PLAN:

The requested action is consistent with the city's strategic plan goal to *actively engage in public and private partnerships to provide services and amenities* because the first amendment to the Agreement and Deed Restriction will continue to be between the City of Corona and the owner/operator of the affordable senior housing complex that will provide special services for the city's senior population.

FISCAL IMPACT:

The amendment to the existing Agreement and Deed Restriction will have no fiscal impact on the city's General Fund.

ENVIRONMENTAL ANALYSIS:

The first amendment to the Agreement and Deed Restriction is not considered a project under the California Environmental Quality Act (CEQA) and is therefore not subject to further environmental review.

PREPARED BY: JOANNE COLETTA, COMMUNITY DEVELOPMENT DEPARTMENT

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

SUBMITTED BY: MICHELE NISSEN, ACTING CITY MANAGER

Attachments:

1. Exhibit 1 - First Amendment to Agreement and Deed Restriction.
2. Exhibit 2 - Original Agreement and Deed Restriction dated May 5, 1998.