



**BURLINGAME CITY COUNCIL  
Unapproved Minutes**

**December 2, 2019 Meeting that was Adjourned to December 4, 2019 at 7:30 p.m.**

**1. CALL TO ORDER**

On December 2, 2019, Council adjourned their meeting to December 4, 2019 in order to allow for more discussion on Agenda Item 10d. The meeting was called back to order at 7:30 p.m. on December 4, 2019.

**2. ROLL CALL**

**MEMBERS PRESENT:** Beach, Brownrigg, Colson, O'Brien Keighran, Ortiz

**MEMBERS ABSENT:** None

**3. STAFF REPORTS AND COMMUNICATION**

**a. CONSIDERATION OF A RESOLUTION AUTHORIZING THE CITY OF BURLINGAME TO BECOME AN ADDITIONAL MEMBER OF THE CALIFORNIA COMMUNITY HOUSING AGENCY (CALCHA)**

Mayor Colson stated that the December 2, 2019 meeting was adjourned to December 4, 2019 at 7:30 p.m. to allow the City Attorney time to obtain answers to some of Council's questions on Agenda Item 10d. She noted that this decision was made because the City needed to decide whether it should become an additional member of the California Community Housing Agency ("CalCHA") by the end of the week.

City Attorney Kane explained that at the December 2, 2019 meeting, Council and staff had questions about how the program works and what guarantees were in place for the City. She noted that at the start of the meeting on December 2, there was a lot of documentation that staff had not seen nor had the chance to review that dealt with those questions. Accordingly, at the December 2 meeting, Council asked that Jordan Moss, the CEO of Catalyst Housing Group, and CalCHA work with the City Attorney so that she could report back to Council on December 4.

City Attorney Kane explained that she had a lengthy discussion with CalCHA's bond counsel, Justin Cooper, of Orrick. She discussed Mr. Cooper's expertise in the field and stated that he had been integral in setting up CalCHA.

City Attorney Kane stated that part of Mr. Moss's presentation was that CalCHA would not acquire properties within the city's boundaries without the approval of the City. She explained that at the December 2 meeting, it was discussed that staff had not seen any documentation that this was an enforceable rule. She discussed her conversation with Mr. Cooper on this issue. She explained that CalCHA has no written formal policy that requires the JPA to obtain the City's approval before acquiring properties in the city. Instead, she stated that what results in the requirement of obtaining City approval is that in order for the JPA to use public bond financing, the bond counsel has to sign off on the appropriateness of the offering. She noted that the bond counsel would require the City's approval to sign off on the appropriateness of the offering.

City Attorney Kane stated that the Council should keep in mind that obtaining City approval is not a requirement under the JPA. She noted that both Mr. Moss and Mr. Cooper stated that a side letter could be signed outlining this requirement.

City Attorney Kane stated that Council had also voiced concerns about what happens at the end of the 30-year bond term. She explained that at the December 2 meeting, there was conflicting information about whether there was immediate amortization of the bonds (turbo amortization) or if amortization starts at year 15.

City Attorney Kane stated that Mr. Cooper had informed her that each offering is different. She explained that the investment managers will decide on the amortization schedule based on the characteristics of the asset and what the bond market wants. She noted that some bond purchasing markets don't want bonds to be pre-paid. Instead, they want to know that they have guaranteed interest only payments for a certain amount of time.

City Attorney Kane stated that unfortunately, the City won't know if the JPA can start paying on the principle immediately until the bond purchase is set up.

Vice Mayor Beach stated that Mr. Moss led Council to believe at Monday night's meeting that if the City chose to do nothing, then at the end of year 30, the asset would be turned over to the City. She asked what happens at the very end.

Councilmember Ortiz stated that Mr. Moss told Council that CalCHA had a requirement that any surplus funds be used to pay down the bonds. He noted that this didn't seem to be the case based on what the City Attorney had just stated.

Councilmember Brownrigg stated that he believed that what Mr. Cooper was telling the City Attorney was that depending on what the interest rate and terms are, you can't be sure how much principal remains at year 15. He stated that a lot of factors go into paying down the principal including cash flow and rent prices.

City Attorney Kane noted that CalCHA may not be able to make payments against the principle prior to year 15 or later. She explained that there are situations where the bond market would prefer a guaranteed 20-year interest payment only term. She added that in this situation, CalCHA could create an excess revenues fund that would be utilized once the JPA can pay down the principal. She stated that the sample purchase option

agreement that staff reviewed from CalCHA showed that the excess operating revenues were held in a trust until year 15.

City Attorney Kane stated that another statement that was made at the December 2 meeting was that all excess revenues of the asset go to the City. She explained that the statement was consistent with the principle of the sample purchase agreement that staff reviewed. She stated that when she asked Mr. Cooper about this statement, she was informed that it depends on how the bonds are marketed. She added that Mr. Cooper had stated that it is Orrick's opinion that the cities are the appropriate entity to be at the bottom of the waterfall. This is because it is the cities that have the general governmental functions that aren't being subsidized by the property taxes.

City Attorney Kane stated that she asked Mr. Cooper if CalCHA could be at the bottom of the waterfall, since it is a public entity. She was informed that there is nothing in law that prevents this from happening. However, it is bond counsel's opinion that this would be inappropriate, and Orrick wouldn't endorse the issuance of the bonds in that situation.

City Attorney Kane stressed that there is no legal document that prevents CalCHA from being the recipient of the waterfall.

Councilmember O'Brien Keighran asked if there was a way to include language in the agreement that would require the City to be at the bottom of the waterfall. City Attorney Kane stated that the primary agreement is the purchase option, and it ties the City to the issuance of the bond. However, she noted that this gets back to Vice Mayor Beach's question about what happens at year 30 when the bond term is finished.

City Attorney Kane stated that she asked Mr. Cooper what would happen if the City doesn't exercise the purchase option between years 15 and 30. Mr. Cooper told her that the intent of the program is that the asset would be liquidated, and the proceeds would go to the City. She asked if there was any document that stated this intent; bond counsel replied in the negative. She asked if there was anything that ensured that this would happen; bond counsel replied in the negative.

City Attorney Kane explained that what is structurally odd is that the purchase option agreement is directly tied to the bond term. Therefore, the individuals that have the incentive to ensure that the program is operating as intended during the bond term are the bondholders. However, once the bondholders are paid, CalCHA is left holding the title to the asset, and the City's purchase option is over.

Councilmember O'Brien Keighran asked if the City didn't exercise its purchase option, at year 30, could CalCHA keep the asset and raise rents to market rate. Additionally, if this happened, would the property remain tax exempt because CalCHA is a governmental entity.

Mayor Colson stated that for the property to be tax exempt, it had to provide a public benefit: 1) keep rents below market rate, and 2) at the end of the bond term, give the asset to the City. Therefore, she didn't believe the asset would remain tax exempt under Councilmember O'Brien Keighran's example.

City Attorney Kane stated that for a nonprofit to get the tax-exempt status, they have to show a community benefit. However, she noted that a governmental agency would generally be free from showing the community benefit.

Councilmember Brownrigg stated that Council didn't need to approve of the purchase option agreement at the meeting. Instead, he explained that the Council could join the JPA, and then negotiate the terms of the purchase option agreement. He added that it should be explicit in the agreement that the City is at the bottom of the waterfall.

City Attorney Kane stated that this could be done. However, she noted that the purchase option runs with the bonds. Therefore, she explained that the question becomes how to bind a future JPA board after the City's option has expired. She stated that this is partly why the discussion relies on the overall intent of the program.

City Attorney Kane explained that if under the program the City obtains the asset at the end of year 30, then the purchase agreement doesn't need an expiration date. She added that another concern is how does the City ensure that it is at the bottom of the waterfall and what incentive do the asset managers have to keep up the property if they know they are going to lose it at the end of year 30.

Councilmember Brownrigg stated that Catalyst has a sliver of Series B bonds that only get paid off when the Series A bonds are fully redeemed. He stated that this won't happen if they don't maintain the building. He explained that this was Catalyst's incentive to maintain the building.

Mayor Colson stated that the City was in a similar situation with the Lots F and N project. She explained that the Lots F and N project is for 55 years, and the City can purchase the asset at the end. She discussed different options the City had for both projects at the end of their terms including: assigning the properties to nonprofits, refinancing with low-income housing bonds, or not exercising their option to purchase.

Councilmember Ortiz stated that the City has the option to purchase the property from year 15 to year 30. If the City doesn't exercise the option, there must be a good reason.

Councilmember O'Brien Keighran stated that the Council doesn't know who will be on the Council in 30 years and what their priorities will be. She explained that while this is an issue that the Council is relatively in tune with, the City may have a Council in 25 years that may not care until it is too late. She stated that the more the City can get guaranteed in writing, the better off the City is.

Councilmember O'Brien Keighran stated that one of her concerns is the general upkeep of the building, because as she understands it, the City doesn't have much of a say in the maintenance of the building. City Attorney Kane replied in the affirmative and stated that she believed this was by design.

Councilmember O'Brien Keighran asked if the City could require annual inspections of the property. She also asked what monitors are in place to ensure that the AMI levels promised are maintained. Lastly, she asked what rights the City has if things aren't being handled as promised.

Mayor Colson stated that at the December 2 meeting, Mr. Moss stated that CalCHA would provide an annual report on the AMI tiers in the building.

City Manager Goldman stated that Mr. Moss sent Council the documents that were used for the property CalCHA acquired in Fairfield. She noted that in those documents, there was a guarantee of establishing the three AMI tiers with an equal number in each tier.

City Attorney Kane stated that bond counsel noted that the specifics of the AMI mix could be established with Council's input if it creates a range that pencils out for the economics of the project.

City Attorney Kane stated that another question she had answered was what happens if the City decides to leave the JPA during the term of the bond. She explained that the answer is nothing.

Vice Mayor Beach asked if the City leaves the JPA, would the City still have the option to purchase the property between years 15 and 30. City Attorney Kane replied in the affirmative and explained that the option is a contract that the City enters into in year one and is valid through year 30.

City Attorney Kane stated that the last question Council raised at the December 2 meeting was a question of timing. She explained that when CalCHA acquires a property, the majority of the current tenants will not qualify for the AMI tiers that are established. She discussed the natural turnover that occurs in multi-family developments that will allow CalCHA to make the property 100% affordable. She noted that the property would be tax exempt from day one, whether or not it is 100% affordable.

Vice Mayor Beach stated that presumably AB 1482 and other state legislation could slow down tenant turnover and further delay the property from becoming 100% affordable. City Attorney Kane stated that CalCHA has committed to not evict tenants in order to achieve their AMI targets. She explained that as a result, it requires the natural evolution of turnover. She noted it is unclear whether AB 1482 will significantly affect turnover.

Mayor Colson stated that she believed there were exemptions to AB 1482 where it wouldn't apply to governmental sponsored housing. She noted that Legal Aid's website states that government subsidized or below market rate housing that is set based on income levels is excluded from AB 1482. City Attorney Kane replied that the current tenants in the property would be market rate tenants, and therefore AB 1482 would still apply to them.

Councilmember Brownrigg discussed where CalCHA's fiduciary responsibility lies. He noted that out of the gate, CalCHA's fiduciary responsibility is to the bondholders, but somewhere down the line, the fiduciary responsibility switches to the City. He asked how that shift occurs.

Mayor Colson asked what would happen if the bonds are paid off in year 28. City Attorney Kane stated that the City would still have two years left on their option.

Vice Mayor Beach discussed the potential political issue of the residents of the building wanting the property to remain affordable, and at year 30 the City deciding not to exercise their purchase option for a variety of reasons.

Councilmember Ortiz stated that because the City has the option to buy the property between years 15 and 30, at some point the City could partner with an organization like Mid-Peninsula Housing that would refinance the property and keep it affordable.

City Attorney Kane and Councilmember Brownrigg discussed the possibility that CalCHA might try to refinance the property towards the end of the original bond term.

Councilmember Brownrigg stated that he wanted it to be clear in the agreement that CalCHA can't refinance the property.

Vice Mayor Beach stated that to enter the JPA, the City needs to be comfortable with foregoing about \$1 million in property taxes to several entities for 30 years. She asked if 25 to 30 years of below market rate housing was worth the loss in property taxes.

Mayor Colson agreed that this is the question.

City Manager Goldman noted that she had received a call from the County Manager asking what the City is planning to do. He noted that if the City entered the JPA and CalCHA was successful in purchasing the property, there would be a hole in the County's budget that would have to be filled with Measure K funding.

Mayor Colson noted that property taxes were rising and that the City had seen an increase of 6%.

Councilmember O'Brien Keighran asked if CalCHA acquires the property and is sued as a result of something happening in the building, would the City be included in the suit. City Attorney Kane stated that the City's defense would be that the JPA can be sued and sue in its own name. However, she noted that it doesn't mean that an individual wouldn't try to include the City in the suit.

Mayor Colson discussed the end of the bond term and stated that her suggestion would be for the City to partner with a non-profit organization so that the City doesn't end up managing a multi-family development.

Vice Mayor Beach and Mayor Colson discussed the timing of assigning the option to a third party.

City Attorney Kane stated that the City would probably want to wait until closer to the option period to see what organization has the ability to purchase the property at that time.

Vice Mayor Beach stated that the Kings County Board of Supervisors has ultimate authority, and they are being advised by three private companies that are managing the different aspects of the program. She discussed how the bond documents help to provide the City certain protections, but she wondered if there were any other pitfalls in the governance structure that the Council should discuss.

City Attorney Kane stated that this is more of a policy question. She explained that if the Council approves the resolution, then the City is signing on to the JPA so that the bonds can get issued. She noted that this is the extent of the City's involvement. She stated that CalCHA has been very clear that they manage the property and control the property. She noted that the JPA agreement is set up to be deliberately broad to allow CalCHA the maximum operating freedom.

Councilmember Brownrigg stated that he believed that the City should insist in a side letter that there be audited financials, an understanding of the rent profile, and that the City can inspect the property. He explained that much like an heir can review the management of a trust, so should the City be able to review the property. He stated that he believed the City had legal standing to require thorough reporting.

City Attorney Kane discussed the enforceability of a side letter.

Councilmember Brownrigg stated that the City needs to review the purchase option agreement in order to insert language that ensures that CalCHA acts as fiduciaries to the City.

City Attorney Kane stated that she agreed with Councilmember Brownrigg. However, the concern she has is that because of the compressed time frame and given that CalCHA has not previously structured their program in this manner, she doesn't know if the City can effectuate that vision.

Mayor Colson wondered if the purchase option agreement included language that made it clear that CalCHA were fiduciaries to the City, would it open the City up to liability.

The Council further discussed the potential bond payments, how the financing would be structured, and the duties of the bondholders.

City Attorney Kane summarized her conversation with Mr. Cooper. She explained that there aren't a lot of guarantees of the kind that the City can enforce. However, she noted that the structure of public bond financing would create some guarantees for the City.

City Attorney Kane stated that what she hasn't explored is whether Council contingencies on signing the purchase option agreement would cause CalCHA to refrain from entering an offer. She explained that if there is a question about whether the City would ultimately sign the agreement, it might prevent CalCHA from entering an offer.

Councilmember Brownrigg stated that he would suggest that if the Council makes a motion, it would be to join the JPA.

City Attorney Kane stated that the proposed resolution has the City joining the JPA and gives the City Manager authority to execute the purchase option agreement.

Vice Mayor Beach thanked the Mayor and Council for their efforts on researching the program and what it entails. She explained that there is no silver bullet that will solve the housing crisis in the Bay Area. She

stated that she believes she can support this program but is leery of making this a pattern in the city. She noted that she is more comfortable securing existing affordable units by using the linkage fees versus property tax dollars.

Vice Mayor Beach stated that the program presents a unique opportunity to help 100 to 200 Burlingame residents. She added that she wanted the City to strongly consider exercising its option to a nonprofit developer that is an expert in this industry.

Councilmember Brownrigg concurred.

Mayor Colson discussed the Measure K backfill funds.

City Manager Goldman stated that she believed the challenge for the County is if this type of program becomes epidemic and numerous properties are taken off the tax roll.

Mayor Colson noted that at Assemblymember Mullin's meeting, it was discussed that there might be future legislation that limits the amount of tax exemption that governmental agencies can have.

Councilmember Ortiz stated that the building is going to sell, and therefore two things can happen, either a developer purchases the property, evicts the current tenants, renovates the building, and rents the units at a much higher rate or the City can enter into the JPA and potentially preserve affordable housing. He noted that he is still uneasy about some of the issues, but he stated that he couldn't see allowing the first option to take place.

Mayor Colson opened public comment. No one spoke.

Councilmember O'Brien Keighran stated that she wasn't in support of entering the JPA. She explained that she liked programs and agreements that were or close to iron-clad, and this program was far from it. She noted that she didn't want to set a precedent and didn't want the City to be in a JPA where the City had no say. She discussed her concerns about the property taxes and how while it might not be an issue now, when the economy takes a downturn, the City might wish it had that money coming in.

Councilmember Brownrigg stated that the resolution as written gives the City Manager authority to sign future purchase option agreements. He explained that he believes the Council would be wise to make it clear that the City Manager won't sign any future purchase option agreements without first consulting with the Council. City Manager Goldman replied in the affirmative.

City Attorney Kane stated that the resolution could be verbally amended to include the term that the City Manager is authorized upon consultation with the Council.

Mayor Colson stated that she didn't believe there was a right or wrong vote on this issue. She noted that a lot of the risks had been assessed. She stated that for her it comes down to the fact that it is hard to build affordable housing. Therefore, if the City can preserve housing for the missing middle, the City should try.



Mayor Colson asked if she was correct that if the City joins the JPA but the immediate acquisition falls through, the Council could bring the item back on a future agenda item and remove themselves from the JPA. City Attorney Kane replied in the affirmative.

Mayor Colson and Councilmember Brownrigg discussed the fact that the County is looking into doing a similar JPA within the County.

Councilmember Brownrigg noted that the HEART Executive Director stated that he would like to create a JPA funding mechanism for smaller buildings.

Mayor Colson stated that she would like to include in the motion that if the property isn't acquired, that Council would direct staff to remove the City from the JPA.

Councilmember Brownrigg made a motion to adopt Resolution Number 152-2019 with the amendment that the City Manager is authorized to sign future purchase option agreements upon consultation with the Council and would note that he would like the City Attorney to follow up with CalCHA for a side letter; seconded by Councilmember Ortiz. The motion passed by voice vote, 4-1 (Councilmember O'Brien Keighran voted against).

#### **4. ADJOURNMENT**

Mayor Colson adjourned the meeting at 9:14 p.m.

Respectfully submitted,

Meaghan Hassel-Shearer  
City Clerk