CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL AGENDA

Agenda Date:	June 3, 2024
Action Required:	Approve Ordinance
Presenter:	Brenda Kelley, Redevelopment Manager
Staff Contacts:	Brenda Kelley, Redevelopment Manager Robinson Hubbard, Deputy City Attorney
Title:	**Ordinance authorizing a Forgivable Loan to Piedmont Housing Alliance to support redevelopment of Kindlewood/Friendship Court Phase 2 for the purpose of producing new housing for low and moderate income persons (1 of 2 readings)**

Background

Piedmont Housing Alliance (PHA) intends to continue redeveloping the 11.75-acre Friendship Court property, n/k/a Kindlewood through a total of four phases over a total of 7-8 years. This $100+ million project includes the creation of approximately 450 affordable rental and homeownership units with tiers of affordability. Additionally, the redevelopment will include commercial and community space, a community park, and associated infrastructure and parking. Phase 1 of the project is substantially complete and created 106 Affordable Units, including the 1:1 replacement of 46 of the existing Project-based Section 8 Rental Affordable Units. Phase 2 of the project proposes the creation of 104 affordable for-rent and for-sale units, including the 1:1 replacement of 54 of the existing Project-based Section 8 rental affordable units.

Over multiple budget years (FY22, FY23 and FY25), City Council has approved a total of $5,750,000 in City Capital Improvements Program funding for Friendship Court Infrastructure Improvements and Friendship Court Redevelopment for Phase 2.

To facilitate the allocation of the approved CIP funding for Phase 2, City staff has been working closely with PHA staff and consultants to develop the attached Ordinance that spells out the agreed-to specifics of how and when the funding will be disbursed, and for what the funding may be expended. Two Amended Declarations of Affordable Housing Covenants – one for rental units and one for homeownership units – will be required to be recorded prior to any disbursement of funding. These documents further provide protections and guarantees in place to insure that Affordable Units and infrastructure are built in accordance to the agreed upon performance requirements to disburse funding. The City Manager and City Attorney will be required to approve these covenants prior to recordation. (Please note: there is an additional [separate] request by PHA, through arrangements with the Charlottesville Economic Development Authority (CEDA), for reimbursement of real estate taxes paid if the Redevelopment achieves certain performance measures; that CEDA Agreement is a separate item on Council's Agenda).

PHA has received a commitment of Low Income Housing Tax Credits (LIHTC) from Virginia Housing to begin construction soon on Phase 2.

Discussion

Phase 2 includes 104 affordable units spanning the spectrum of affordability from below 30% AMI up to 80% AMI. 54 units will be subject to project-based federal Section 8 operating subsidies and a minimum of 4 units will be affordable for-sale homes. The City would enter into a forgivable Loan to PHA for costs expended in the construction of Infrastructure, affordable residential units, relocation assistance and soft costs in Phase 2, over a Loan Period of 40 years.

All Affordable Units will have a Required Affordability Period of 99 years. These affordability terms will also be enforced by the state through Virginia Housing due to the LIHTC award, and also through (i) the terms of the 40-year deferred payment forgivable loan period, and (ii) a 99-year affordable housing covenant.

Years 1-40: If PHA breaches the terms of the Loan (including the Required Affordability provisions) during the initial 40-year Loan Period, the entire amount of the Loan would become payable in full to the City, and the City would have all other remedies available—including the ability to obtain injunctive relief in court for specific performance of the affordability covenants. If the 40-year Loan Period expires, and the affordability covenants have been complied with throughout that time, the entire amount of the Loan will be forgiven (principal and interest).

Years 41 through and 99: the Loan will have been forgiven in Year 40 if all Affordability Requirements were continuously implemented; however, in years 41 through 99 the City will have the ability to file an action in court to obtain an injunction requiring Affordable Units to be provided within the Project throughout the 99-Year Required Affordability Period.

Here are some key elements of the attached documents:

- 100% of the units constructed within the Project will be provided for rental or ownership by low and moderate income persons. All Affordable Units, whether Rental or For-Sale Units, will be and remain affordable for a period of 99 years.
- Within Phase 2 of the Project, a minimum of 100 Rental Affordable Units shall be provided, as follows: (i) 54 Rental Affordable Units shall be provided as 1:1 replacements for existing units with Project-based Section 8 operating subsidy; (ii) no fewer than 23 Rental Affordable Units will be provided for households with incomes of not more than 80% AMI; (iii) no fewer than 9 Rental Affordable Units will be provided for households with incomes of not more than 60% AMI; (iv) no fewer than 58 Rental Affordable Units will be provided for households with incomes of not more than 50% AMI; (v) no fewer than 10 Rental Affordable Units will be provided for households with incomes of not more than 30% AMI.
- Within Phase 2 of the Project, a minimum of 4 For Sale Affordable Units shall be provided, as follows: (i) no fewer than 4 For Sale Affordable Units will be provided for households with incomes of not more than 30% - 80% AMI; (ii) the average AMI of the 4 For Sale Affordable Units shall not exceed 60% AMI.
- A Master Affordable Housing Covenant for the entire site was recorded prior to development of Phase 1. Two Amended Declaration of Affordable Housing Covenants will be recorded to provide assurances of affordability for Phase 2. As each phase of redevelopment proceeds,

new Amended Declaration of Affordable Housing Covenant(s) for that phase of development will be approved and executed and recorded by the parties. In addition, if the City is providing funding to support the redevelopment of subsequent phases, an Ordinance will be approved by City Council to specify the terms of that funding.

- The Phase 2 Amended Declaration of Affordable Housing Covenants do not incorporate any other scope of the project beyond Phase 2.
- The Project, upon completion, shall be constructed in accordance with the Master Plan developed by PHA/Kindlewood/Friendship Court with input from Kindlewood/Friendship Court residents.
- Loan proceeds can only be used for: (a) the installation, construction, or reconstruction of public streets (inclusive of sidewalk, curb and gutter, stormwater, landscaping), utilities, and park(s), essential to the Project (Public Infrastructure); (b) to prevent the displacement of low and moderate income residents of the existing property to be redeveloped, and for construction of new Phase 2 housing units for rental and homeownership by low and moderate income persons (ADU Construction); and (c) to cover "soft costs" associated with the planning and design for construction of infrastructure for the Project and /or construction of Rental or For-Sale Affordable Units within Phase 2 of the Project.
- Prior to the first disbursement of funding, the following documents are required to be provided to the City for the Phase 2 development: (i) a public infrastructure plan; (ii) a Resident Relocation Plan; (iii) a Construction Schedule; (iv) the Budget for the Project; (v) the Amended Declaration of Affordable Housing Covenants to be executed and recorded in the public records; (vi) an Affordable Marketing Plan;
- Each disbursement of funding is required to provide documentation that such amount(s) have actually been paid to construction contractor(s), subcontractor(s) and/or independent contractors for work or services already completed (In other words: reimbursement for completed work or services).
- The disbursement of City funds shall constitute loan proceeds. The term of the Loan is forty (40) years, commencing on the date of the final disbursement of Loan proceeds by the City. As security for the Loan, the City will be granted an assignment of its subordinate interest in Phase 2. Interest shall accrue on outstanding amounts of the Loan at the annual rate of 3%. If the Project is completed and operated continuously in accordance with all terms, then the Loan and the accrued interest shall be forgiven.
- Beginning with the first occupancy of any Affordable Unit, PHA and/or the developer of the homeownership units will be required to provide an annual report, which shall include at a minimum: (a) the number of affordable units that are occupied; (b) the number of affordable units that are vacant; (c) for each unit that is vacant, the manner in which the unit became vacant and the progress in re-leasing the unit; (d) for each occupied unit, current household information; (e) a sworn statement that occupants of the affordable units meeting the eligibility criteria; (f) a copy of each new or revised Certification of Income; (g) a copy of each new or revised Certification of Residency; (h) a copy of each inspection report and Certification of Inspection for each unit; and (i) a copy of all forms, policies, procedures, and other documents reasonably requested related to the affordable rental units.
- Once the Amended Declaration of Affordable Housing Covenants are recorded, then the Affordability Requirements become binding not only on the current landowner(s), but also upon any third parties to whom the Project may be sold in the future. (In other words: the Affordability Requirements will run with the Land).

- Following the expiration of the LIHTC extended use period, the City will have the exclusive right to lease up to 20% of the Rental Affordable Units, for forty (40) years, at a rental rate not to exceed that which would be payable by a household of four persons having an income of 80% AMI.
- The City shall have the right to purchase a For Sale Affordable Unit in the event of a foreclosure on the unit. The City may designate another agency or other third party to take title to the unit.
- **PHA has requested that the documents contain provisions that specify that (affordability) restrictions on the Project will terminate in the event the Project is foreclosed upon by Virginia Housing (provider of LIHTC). This request is pursuant to certain development policies established by Virginia Housing. We have drafted the documents in a manner that complies with the Virginia Housing policies.**
- The CIP funding approved to date for Phase 2, in the total amount of $5,750,000 is as follows:
  - FY22 Infrastructure: $2,000,000
  - FY22 Phase 2: $ 750,000
  - FY23 Phase 2: $2,500,000
  - FY25 Phase 2: $ 500,000

Approval of this Ordinance will allocate the funds in one lump sum while allowing for a not to exceed amount of $525,000 for soft costs.

- It is intended that upon completion of construction of the streets and the park (park constructed over Phase 2 and Phase 3; streets constructed over all phases), those public infrastructure will be conveyed to the City for ownership (and maintenance). An agreement specifying conveyance responsibilities will come to the City Council at a future date.

Here are some key considerations regarding the redevelopment:

- In the event that the Project is foreclosed upon, the affordability restrictions will terminate.
- At some point, in order to maintain affordability, the City may have the opportunity to control affordable units in the Project. However, if the City were to take advantage of this opportunity, there will be a cost to the City associated with this.

Alignment with City Council's Vision and Strategic Plan

This action aligns with the Council’s Strategic Plan Framework Strategic Outcome Areas for Housing; and Partnerships; and Recreation, Arts, Culture.

Community Engagement

There has been significant community engagement, primarily at the resident level, including an Advisory Committee for the overall development of Friendship Court/Kindlewood.

Budgetary Impact

No additional funding is required at this time. Approval of the attached Ordinance will establish the terms and conditions under which the CIP funding previously approved for Phase 2 can be expended.

Recommendation
Approve the Ordinance.

Alternatives
City Council can decline to adopt the attached Ordinance.

Attachments
1. Ordinance Friendship Ct Redev Phase 2 final060324