



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Nanci Klein

**SUBJECT:** SEE BELOW

**DATE:** May 28, 2024

Approved

Date

6/6/24

**COUNCIL DISTRICT: 7**

**SUBJECT: COUNCIL POLICY 7-1 LEASE AGREEMENT BETWEEN THE CITY OF SAN JOSE AND NEW BEGINNINGS FAMILY SERVICES FOR A PORTION OF CITY-OWNED PROPERTY LOCATED AT 100-104 W. ALMA AVENUE**

## RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager or her designee to negotiate and execute:
  - (1) A lease agreement under Council Policy 7-1 between the City of San José and New Beginnings Family Services, a California not for profit organization, for a portion of the City-owned real property located at 100-104 W. Alma Avenue, further identified as Assessor Parcel Number 434-23-133; and
  - (2) All other documents or agreements necessary to effectuate the lease agreement.
- (b) Approve staff's recommendation to waive certain provisions of Policy 7-1 pursuant to Policy 0-1 of the Council Policy Manual.

## SUMMARY AND OUTCOME

Approval of this recommendation will direct staff to negotiate and execute a lease agreement consistent with Council Policy 7-1 between the City of San José (City) and New Beginnings Family Services (New Beginnings) to operate at a vacant property located at 100 W. Alma Avenue (Property).

The Property was donated to the City in December 2020 with the understanding that the City

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would develop it as a park to benefit the youth of the surrounding neighborhood. The City has prepared a master plan for the park and commenced the design of construction documents. The funding for the park is identified as part of the Five-Year Capital Improvement Budget. Construction of the park will require the demolition of the building at 100-104 W. Alma Avenue.

The County Policy 7-1 lease agreement will allow New Beginnings to provide various youth and family services in the area, including a food pantry and food distribution, self-help legal services, and social worker support services until construction of the park begins.

## **BACKGROUND**

The Property is a portion of a City-owned, 4,254-square-foot retail building on a 7,742-square-foot lot located at 100-104 W. Alma Avenue and identified as Assessor Parcel Number 434-23-133. The Property sits in Council District 7, on the border of District 3, and is adjacent to the City's Alma Community Center, located at 136 W. Alma Avenue, San José, CA 95110.

In December 2020, the City executed a donation agreement with Randall D. Reedy, attorney and Successor Trustee representing the Trusts for Rocco Elia and Louise Scaglione Elia, for the Property, and an adjacent residential property located at 1413 Sanborn Avenue (APN 434- 23-134). The agreement stipulated that the properties are to be used for the construction of a children's park.

The Property was initially occupied by the Mexican Brother's Market. In April 2021, the operators notified City staff that they were no longer able to make their rent payments. In October 2021, the City facilitated the transfer of the business to the long-term shop manager and executed a two-year lease with the succeeding operator at a lowered rental rate. Unfortunately, the business was unsustainable, and the succeeding operator vacated the Property in December 2022. The Property has remained vacant since that time.

The Parks, Recreation, and Neighborhood Services Department is managing the park's design and development. Development is currently on pause until funding to complete the design and construction is secured.

New Beginnings is currently a subtenant of the City's master tenant, Act for Mental Health, located at 441 Park Avenue in San José. New Beginnings' landlord, Act for Mental Health, has issued a notice that it intends to fully occupy the 441 Park Avenue building, and New Beginnings must vacate the Property pursuant to its sublease arrangement.

## **ANALYSIS**

New Beginnings offers the residents of San José food pantry and distribution services, self-help legal services, family services, trauma-focused workshops, substance abuse support, and case management for clients, including social worker support. New Beginnings has a unique service model that focuses on improving parenting skills, reducing the risk of children entering the foster care system, and increasing family awareness of resources provided by the County of Santa Clara Department of Family and Children's Services for family retention. New Beginnings anticipates losing its current accommodations in the fall and is in need of a new facility to continue its operations. New Beginnings applied for a reduced rent Council Policy 7-1 lease agreement that would allow them to continue its operations in a City facility so it can continue to meet the underserved needs of the local community in San José.

Following is an analysis of how the New Beginnings application conforms with Council Policy 7-1.

### **Property Criteria**

City staff reviewed the Property and qualifying criteria in Council Policy 7-1 and determined that the proposed Property conforms to Policy 7-1. The land or building is not immediately needed for public purposes, but will be retained for future public purposes when the Parks, Recreation and Neighborhood Services Department is ready to move forward with the development and construction of a park. The donation agreement used to acquire the Property did not preclude the Property from legally being leased at less than a fair market rate. The prospective tenant has toured the Property and verified that it is reasonably suited for its business needs, as the former market has the necessary space and equipment needed to store food and perishables for the food distribution program.

### **Qualified Organization Criteria**

New Beginnings meets the organizational qualifying criteria to lease under Council Policy 7-1. Staff was able to review and evaluate all the required application materials requested for qualifying organizations under the 7-1 policy, with the exception of an audited financial report. New Beginnings provides services to address an underserved community in San José through its family services model, and a continuing public need exists for the services it provides. Staff reviewed and verified the organization's non-profit public benefit status as evidenced by an IRS 501 (c) (3) tax-exempt letter provided to the City, as well as via the California Secretary of State. Staff received and reviewed the organization's Bylaws, Board of Directors, and recent meeting minutes. New Beginnings will not engage in sectarian, political, or religious activities on the Property, and terms governing the use of the Property will be incorporated into the lease agreement.

## **Criteria for Public Benefit Use of Space**

New Beginnings submitted a detailed executive summary of its organization that included the program's objective, a profile of the clientele being served, organizational charts, and staff roles, as well as evidence of adequate public liability insurance and property damage insurance.

Staff was able to review and analyze all required application materials submitted by New Beginnings as part of its proposal, including sources of funding and board minutes from the most recent meeting in December 2023, with the exception of a current certified financial statement. The proposed programs do not currently have a funding source and the organization does not hire an accountant to review and provide certified financial statements. City Council may waive these requirements under Council Policy 7-1 and conform to Council Policy 0-1. Staff recommends that City Council approve this waiver. Staff will need to review alternative financial documentation provided by New Beginnings to meet the requirement for a current certified annual financial report under the annual review requirement for the Council Policy 7-1 lease. For the purposes of this evaluation, staff reviewed tax returns (last three years), bank statements (last three years), and accounting spreadsheets provided by New Beginnings.

After reviewing the provided documentation, staff determined that New Beginnings' proposed program conforms to Policy 7-1.

## **Proposed Lease Terms**

Staff recommends proceeding with a lease agreement that would enable New Beginnings to operate out of the 100 W. Alma facility until the Parks, Recreation, and Neighborhood Services Department is ready to begin construction on the park. New Beginnings provides vital family services to underserved communities that are consistent with the terms of the Donation Agreement and the Elias's desire to enrich the lives of the neighborhood's children through their gift to the City.

The City and New Beginnings have executed a non-binding letter of intent outlining the following lease terms.

1. **LANDLORD:** City of San José, a municipal corporation of the State of California.
2. **TENANT:** New Beginnings Family Services, a California 501(c)(3) nonprofit.
3. **PREMISES:** 100 W. Alma Avenue, San José, CA 95110, consisting of approximately 4,254 square feet.
4. **RENT:** \$1.00 per month (\$12 per year).

5. **USE OF PREMISES:** Food pantry and distribution services, self-help legal services, family services, trauma-focused workshops, substance abuse support, and case management for clients, including social worker support.
6. **TERM:** Up to 10 years. City will terminate the lease when the Parks, Recreation, and Neighborhood Services Department is ready to construct the neighborhood park for which the Property is intended.
7. **TERMINATION WITHOUT CAUSE:** The City may terminate the lease upon 90-days notice without cause. Pursuant to Council Policy 7-1, some reasons that the City may exercise its right to terminate the agreement include:
  - a) To prepare the Property for the construction of the neighborhood park;
  - b) The Property is required for a different governmental purpose;
  - c) It is determined by the City Council that the Property should be sold as surplus Property;
  - d) It is determined by the City that the services provided by New Beginnings are no longer necessary or adequate to justify the below market rent;
  - e) It is determined by the City that New Beginnings is not providing the services proposed or is providing unapproved alternative services;
  - f) Inspection of the Property reveals that the Property, facility, and equipment are not being properly maintained;
  - g) The non-profit or charitable organization fails to provide proper liability insurance at any time during the term of the agreement; and,
  - h) It is no longer economically feasible or beneficial for the City to continue the arrangement.
8. **TERMINATION FOR CAUSE:** City may terminate the lease with a 30-day notice and a 30-day cure period, at any time for any of the reasons established in the lease agreement, including, but not limited to the following:
  - a) Failure to pay rent;
  - b) Failure to manage operations or pay utilities or other operating expenses at the Property including, but not limited to: water, gas, electricity, telephone, trash collection, and recycling;
  - c) Causing nuisance or incurring liability to neighboring properties or businesses; and
  - d) Failure to maintain building, including but not limited to, plumbing, HVAC, electrical, doors, windows/store fronts, and lighting facilities and equipment including, but not limited to, refrigeration or other food storage equipment or other large appliances at the premises.
9. **MAINTENANCE:** Tenant accepts the premises in its as-is condition and is responsible for all maintenance to the premises, including contracting with specialized professional

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services for the upkeep and maintenance of the building systems (plumbing/HVAC) and specialized food storage appliances.

10. **NON-PROFIT ONLY:** No for-profit business or activities are permitted.

11. **POLITICAL OR RELIGIOUS ACTIVITIES:** No sectarian, political, or religious uses may be conducted on the Property.

12. **OTHER TERMS:** All other terms, criteria, and requirements of the Council Policy 7-1 Below Market Rental Policy apply.

### **EVALUATION AND FOLLOW-UP**

Staff will negotiate and execute a lease with the tenant consistent with the terms outlined in Council Policy 7-1 and this memorandum.

### **COST SUMMARY/IMPLICATIONS**

Revenue of \$12 per year from this lease would be credited to the City's General Fund.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the City Manager's Budget Office, and the Departments of Planning, Building, and Code Enforcement, and Parks, Recreation, and Neighborhood Services.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the June 18, 2024 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

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## **CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. The proposed action is not a Project pursuant to California Environmental Quality Act Guidelines Section 15378 because there is no potential for either a direct or a reasonably foreseeable indirect physical change in the environment.

## **PUBLIC SUBSIDY REPORTING**

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

NANCI KLEIN

Director of Economic Development  
and Cultural Affairs

Director of Real Estate

For questions, please contact Kevin Ice, Assistant to the City Manager, Senior Real Estate Manager, at (408) 535-8197.