

CITY COUNCIL/REDEVELOPMENT AGENCY

**TUESDAY, FEBRUARY 16, 2010
AGENDA ITEM No. 22**

**PUBLIC HEARING
&
RESOLUTION**

- A. **(Tax Equity and Fiscal Responsibility Act)
TEFRA Hearing Process and Project
Description for ASPIRE Public Schools Alvin
James, City Manager; Brent Butler,
Manager, Planning Division; James
Hamilton, Aspire Program Manager; and
Marc Bauer, ASPIRE Project Consulting
Attorney**

- B. **Resolution Approving the Issuance of
Revenue Bonds by the California Statewide
Communities Development Authority for the
purpose of financing and refinancing the
cost of acquisition, educational facilities
and certain other matter relating Thereto**



CITY OF EAST PALO ALTO

OFFICE OF THE CITY MANAGER

REDEVELOPMENT AGENCY

2415 University Avenue • East Palo Alto, CA 94303

Date: February 16, 2010

TO: Honorable Mayor and Members of the Council

VIA: Alvin D. James, City Manager

FROM: Brent A. Butler, AICP, Planning Division Manager

SUBJECT: East Palo Alto Phoenix Academy School Tax Equity Fiscal Responsibility Act of 1982 (TEFRA) Tax Exempt Bond Financing

Recommendation

- 1) Open the public hearing
- 2) Take public testimony, and
- 3) Consider adopting a resolution in support of the tax exempt bonds.

Aspire Public Schools operates a charter school, the East Palo Alto Phoenix Academy at 1836 Bay Road. Since the inception of the school, this address was always intended to be temporary as it is not an ideal location for a school, being within a light-industrial complex. Currently, Aspire is in the process of submitting development applications to the city for a permanent site at 1039 and 1063 Garden Street (see Attachment C for site plan details).¹

As part of their financing plan for development of the proposed site, they are requesting that the City Council consider supporting the issuance of revenue bonds for the project, by the California Statewide Communities Development Authority (the "Authority").

Background - Tax Equity Fiscal Responsibility Act of 1982 (TEFRA)

The following is a brief discussion relating to the public hearing process required pursuant to the Tax and Equity Fiscal Responsibility Act of 1982 ("TEFRA"). The TEFRA hearing process is a public accountability procedure involving the legislative body of the local agency in which the proposed project is located. It is a hearing process exclusively related to consideration of the possible issuance of revenue bonds and/or

¹ So as not to prejudice the City Council's possible future review of this item, discussion related to the development requirements related to the site should be limited in scope.

Attachment B: Proof of Publication in the San Mateo Times.
(see attached sheet)

other forms of indebtedness to promote the financing or refinancing of acquisition, construction, improvements and equipping of facilities (in this instance new facilities to accommodate Aspire School). While the project description is specific in location regarding the proposed facility, the project sponsor is aware and has acknowledged in the accompanying attachments that the approval being sought in connection with the bond financing "...will not constitute any other approval of the local agency". In short, the project will be required to follow the city's regular development review and approval process.

During the TEFRA hearing process, the legislative body conducts a public hearing providing members of the community the opportunity to speak on behalf of or against the nature and location of the proposed project to be financed with tax-exempt bonds. Notice of such hearing must be published in a newspaper of general circulation at least 14 days prior to the date of the public hearing.

The City of East Palo Alto would be asked to adopt a resolution approving of the issuance of tax-exempt bonds for the financing of the proposed project. Such approval is required for compliance with the federal tax laws under TEFRA, as well as Section 9 of the Authority's Amended and Restated Joint Powers Agreement (the "Agreement"). Again, this approval does not constitute or imply any other approval of the city as the local agency. Therefore, in order for any financing for a private entity to be completed on a tax-exempt basis, the TEFRA hearing process must be completed by the legislative body of the local agency in which the proposed project will be located.

The Authority is a California joint exercise of powers authority, organized and existing under the laws of the State of California (specifically, California Government Code Section 6500 and following), and is sponsored by the League of California Cities and the California State Association of Counties. Under the California Government Code, cities and counties are authorized to form by agreement a governmental entity that combines the powers of such entities to perform certain governmental functions specifically outlined in the Agreement. With respect to the Authority, over 500 California cities, counties and special districts have entered into and executed the Agreement to become a member of the Authority for the sole purpose of issuing revenue bonds for the financing of projects that promote economic development. The City of East Palo Alto is a member agency, hence the project sponsor is requesting the city's cooperation in approving the issuance of bonds to assist in financing the project.

Fiscal Impact

Each financing completed by the Authority has been structured so that the local agency completing the TEFRA hearing process has no liability with respect to the issuance of bonds or the repayment of any debt service relating to such bonds. More importantly, the local agency completing the TEFRA hearing process is not a party to any of the financing documents relating to the issuance of the bonds nor is it named in any of the disclosure documents describing the bonds or the proposed financing. Accordingly, a decision approving bond issuance will have no impact on the General Fund.

Attachments

- A: Draft Resolution.**
- B: Proof of Publication in the San Mateo Times.**
- C: Draft Site Plan**
- D: California Statewide Communities Development Authority Correspondence , dated
January 28, 2010**
- E: Aspire Charter School Correspondence, dated February 2, 2010**

Attachment A: Draft Resolution.
(see attached sheets)

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EAST PALO ALTO
APPROVING THE ISSUANCE OF REVENUE BONDS BY THE CALIFORNIA
STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY FOR THE PURPOSE
OF FINANCING AND REFINANCING THE COSTS OF ACQUISITION,
CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF CERTAIN CHARTER
SCHOOL EDUCATIONAL FACILITIES AND CERTAIN OTHER MATTERS
RELATING THERETO.**

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is authorized pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California and the terms of an Amended and Restated Joint Exercise of Powers Agreement, dated as of June 1, 1988 (the "Agreement"), among certain local agencies throughout the State of California, including the City of East Palo Alto, California (the "City"), to issue revenue bonds and other forms of indebtedness to promote economic development within the State of California; and

WHEREAS, College for Certain, LLC, a California limited liability company (the "Borrower"), the sole member of which is College for Certain, Inc., an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") and organized exclusively to support Aspire Public Schools, has requested that the Authority issue revenue bonds in one or more series in a maximum aggregate principal amount of \$100,000,000 (the "Bonds"). A portion of the proceeds of the Bonds, not expected to exceed \$7,000,000, will be used to finance and refinance the costs of the acquisition, construction, improvement and equipping of certain charter school educational facilities to be known as the Aspire East Palo Alto Phoenix Academy and to serve approximately 400 students in grades 6-12. The facilities may include but are not limited to classrooms, laboratories, libraries, cafeterias, athletic facilities and administrative offices, located at the parcels at 1059 and 1063 Garden Street, East Palo Alto, California where the mailing address of such facilities will be between 1003 and 1037 Garden Street, East Palo Alto, California (the "Project"). The Project will be owned by the Borrower and operated by Aspire Public Schools; and

WHEREAS, pursuant to Section 147(f) of the Code, prior to their issuance, the Bonds are required to be approved by the "applicable elected representative" of the governmental unit on whose behalf the Bonds are expected to be issued and by a governmental unit having jurisdiction over the entire area in which any facility refinanced by the Bonds is to be located, after a public hearing held following reasonable public notice; and

WHEREAS, the facilities to be refinanced are located within the territorial limits of the City; and

WHEREAS, the members of the City Council are the applicable elected representatives of the City; and

WHEREAS, there has been published, at least 14 days prior to the date hereof, in a newspaper of general circulation within the City of East Palo Alto, a notice that a public hearing regarding the Bonds would be held on the date hereof; and

WHEREAS, such public hearing was conducted on this date by the City Council, at which time an opportunity was provided to interested parties to present arguments both for and against the issuance of the Bonds; and

WHEREAS, it is intended that this resolution shall constitute the approval of the issuance of the Bonds and the Project required by Section 147(f) of the Code and Section 9 of the Agreement, as applicable;

NOW THEREFORE, BE IT RESOLVED, as follows:

1. The City Council hereby finds and determines that the foregoing recitals are true and correct.
2. The City Council hereby approves the issuance of the Bonds by the Authority and the Project to be financed and refinanced thereby. This approval is solely for the purposes of Section 147(f) of the Code and Section 9 of the Agreement. The City shall not have any liability or responsibility for the issuance of the Bonds or payment of principal or interest on the Bonds, the Bonds shall not constitute an obligation or indebtedness of the City and the assets and revenues of the City are not being pledged as security for the payment of principal or interest on the Bonds.
3. The issuance and delivery of the Bonds shall be subject to the approval of and execution by the Authority of all financing documents relating thereto to which the Authority is a party and is subject to the sale of the Bonds by the Authority.
4. The City Clerk of the City shall forward a certified copy of this Resolution and a copy of the affidavit of publication of the notice of public hearing to:

Eugene Clark-Herrera, Esq.
Orlick, Herrington & Stuchiff LLP
405 Howard Street
San Francisco, California 94105

5. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 16th day of February, 2010, by the following vote:

AYES:

NOES:

ABSENT:

ABSEAIN:

David E. Woods
Mayor

APPROVED AS TO FORM:

ATTEST:

Minette Warren, Deputy City Clerk

Vincent C. Ewing, City Attorney

Attachment B: Proof of Publication in the San Mateo Times.
(see attached sheet)

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NOTICE OF CREDITORS

IN RE: THE ESTATE OF [Name], DECEASED

IN RE: THE ESTATE OF [Name], DECEASED

IN RE: THE ESTATE OF [Name], DECEASED

IN RE: THE ESTATE OF [Name], DECEASED

Attachment C: Draft Site Plan
(see attached sheets)

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Aspire Schools
 10000 10th Avenue, Suite 100
 Denver, CO 80231
 Phone: 303.733.1000
 Fax: 303.733.1001
 Email: info@aspire.org



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**Attachment D: California Statewide Communities Development Authority
Correspondence , dated January 28, 2010 (see attached sheets)**

MEMORANDUM

TO: ALVIN JAMES, CITY MANAGER - CITY OF EAST PALO ALTO
FROM: JAMES HAMIL, PROGRAM MANAGER - CALIFORNIA STATEWIDE COMMUNITIES
DEVELOPMENT AUTHORITY
SUBJECT: TEFRA HEARING PROCESS AND PROJECT DESCRIPTION FOR ASPIRE PUBLIC SCHOOLS
DATE: JANUARY 28, 2000

Overview:

The following is a brief discussion relating to the public hearing process under the Tax and Equity Fiscal Responsibility Act of 1982 ("TEFRA"), and the significance of such public hearing in relation to a tax-exempt revenue bond financing to be accomplished through the California Statewide Communities Development Authority (the "Authority"). The TEFRA hearing process is a public accountability procedure involving the legislative body of the local agency in which the proposed project is located. During such process, the legislative body conducts a public hearing providing members of the community the opportunity to speak in behalf of or against the nature and location of the proposed project to be financed with tax-exempt bonds. Notice of such hearing must be published in a newspaper of general circulation at least 14 days prior to the date of the public hearing.

The City of East Palo Alto would be asked to adopt a resolution approving of the issuance of tax-exempt bonds for the financing of the proposed project. Such approval is required for compliance with the federal tax laws under TEFRA, as well as Section 9 of the Authority's Amended and Restated Joint Powers Agreement (the "Agreement"). This approval will not constitute any other approval of the local agency. Therefore, in order for any financing for a private entity to be completed on a tax-exempt basis, the TEFRA hearing process must be completed by the legislative body of the local agency in which the proposed project will be located.

The Authority is a California joint exercise of powers authority, organized and existing under the laws of the State of California (specifically, California Government Code Section 6500 and following), and is sponsored by the League of California Cities and the California State Association of Counties. Under the California Government Code, cities and counties are authorized to form by agreement a governmental entity that combines the powers of such entities to perform certain governmental functions specifically outlined in the Agreement. With respect to the Authority, over 500 California cities, counties and special districts have entered into and executed the Agreement to become a member of the Authority for the sole purpose of issuing revenue bonds for the financing of projects that promote economic development.

Each financing completed by the Authority has been structured so that the local agency completing the TEPPA hearing process has no liability with respect to the issuance of bonds or the repayment of any debt service relating to such bonds. More importantly, the local agency completing the TEPPA hearing process is not a party to any of the financing documents relating to the issuance of the bonds nor is it named in any of the disclosure documents describing the bonds or the proposed financing.

Project Description:

The Aspire East Palo Alto Phoenix Academy ("EPAPA") was established in 2006 and currently serves students in grades 9 through 12. The new campus will be located at 1039/1063 Gassen Street in East Palo Alto (the "Project"). The current student population is served at a temporary campus at 1844 C. Bay Road in East Palo Alto, but will move to the new campus in the fall of 2011. EPAPA will serve students in grades 6-12 and student capacity at the permanent campus will be 406 students.

The facilities will include 18 classrooms, 2 science labs, a gymnasium and a multipurpose room. The par amount of the bonds associated with the Aspire East Palo Alto Phoenix Academy portion of the Project is approximately \$3,575,000.

**Attachment E: Aspire Charter School Correspondence, dated February 2, 2010
(see attached sheets)**

MEMORANDUM

TO: ALVEN JAMES, CITY MANAGER - CITY OF EAST PALO ALTO
FROM: STEPHANIE WILSON - ASPIRE PUBLIC SCHOOLS
SUBJECT: EAST PALO ALTO PHOENIX ACADEMY - SCHOOL AND NEW FACILITY OVERVIEW
DATE: FEBRUARY 2, 2010

Aspire Public Schools is pleased to inform the City of East Palo Alto that we are moving forward on developing a permanent site for East Palo Alto Phoenix Academy (EPAPA), one of Aspire Public Schools' two schools that currently serve the East Palo Alto community. Aspire hopes to develop a small, secondary school on adjacent parcels identified as 1039 Garden Street and 1063 Garden Street (site map and aerial satellite image attached). We are submitting this letter on behalf of East Palo Alto Phoenix Academy in order to keep you apprised of the plans for the property as well as to give you some information in advance of the TEBRA hearing on February 16, 2010, at which point the City of East Palo Alto will be asked to approve a tax-exempt bond issuance for this property. Please keep in mind, however, that a resolution approving the issuance of tax-exempt bonds for this project does not imply approval for any other element of this project.

History and Track Record

In the spring of 2006, against the backdrop of staggeringly high dropout rate in East Palo Alto, a group of eighth grade students, their parents, and teachers from Aspire Public Schools' school serving grades K-8 in East Palo Alto, East Palo Alto Charter School, knew that they wanted a different choice. This group of people was determined to start a small, college preparatory high school in their community. A few months later, the school opened its doors with 22 ninth graders and two staff members and has grown to serve grades 9-12 since that time.

EPAPA has been located at 1848C Bay Road since its inception. This location was always intended to be temporary. It is not an ideal location for a school, so Aspire is excited to now provide students with not only an excellent education but a wonderful place to earn it.

1001 22nd Avenue, Suite 100, Oakland, CA 94606
510-434-8600

Despite operating in this small, temporary facility, EPAPA has succeeded in providing an exceptional education for East Palo Alto students:

- While the dropout rate of EPA students in traditional public schools is 73%, EPAPA has retained more than 90% of its students and all of its seniors take college classes through Calada College.
- All of EPAPA's sophomores passed the California High School Exit Exam on the first try, a claim that only a very small number of schools in the state can make.
- The school's Academic Performance Index (API) score of 675 (on a scale from 200-1000) for the 2008-2009 school year is incredible considering California high schools with greater than 75% socioeconomically disadvantaged students averaged 587 on the same test.

In short, Aspire believes that the development of their new facility will benefit East Palo Alto's residents both educationally and through access to athletic facilities, and the operational strategies to be implemented will mitigate impacts to the neighborhood. Outlined below is the current information for the permanent facility.

New Site Overview

Aspire plans to serve up to 400 secondary school students at the new facility. The new site will have one two-story school building and a gymnasium. The new school will operate with approximately 20 teachers and 14 staff members, some of whom will be part-time employees. Ninety percent of EPAPA's students currently reside in East Palo Alto, with the balance of students being former East Palo Alto residents who moved away but still choose to attend EPAPA. We anticipate that the future enrollment will be the same. Pacific Charter School Development (PCSD) will be the developer for this property. As a non-profit organization, PCSD's mission is to provide low-cost facilities to high-quality charter schools.

Financing

The new school will be financed through a variety of sources. The public bond sale will finance about 1/3 of the cost of the development, with the remainder financed through a

combination of private donations. We also anticipate a contribution to the project from the school district in which most of our students reside, Sequoia Union High School District.

Operations

Aspire will implement several operational strategies to minimize any adverse impact on the surrounding neighborhood. In addition to planning to delay adding to the school population until two years after the school opens, Aspire will operate on a staggered schedule, utilize bussing to transport its students to and from school, encourage biking and walking to school, and make after school programs available.

Site Design and Layout

Enclosed is the draft site configuration. Aspire currently has Purchase and Sale agreements for both 1039 Garden Street and 1063 Garden Street. 1039 Garden Street is a 1.7 acre parcel with a residence and green house/nursery on site. 1063 Garden Street is a nearly 1 acre vacant parcel. Aspire has completed environmental testing on the site and is engaging with the Regional Water Board as well as the County of San Mateo to ensure that the site will be environmentally clean.

Please don't hesitate to contact me with any questions that you or your staff might have. I can be reached at 510-434-5020 or Stephanie.wilson@aspirepublicschools.org.

Sincerely and with appreciation,

Stephanie Wilson
Aspire Public Schools

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