



City of Sunnyvale

Agenda Item

25-0420

Agenda Date: 6/25/2025

REPORT TO HOUSING AND HUMAN SERVICES COMMISSION

SUBJECT

Consider a Below Market Rate Alternative Compliance Plan for Residential Development at 1124 W. El Camino Real: Applicant: DeAnza Properties, Planning File 2024-0780

BACKGROUND

In August 2024, the Planning Commission approved Planning File No. 2024-0780, a new mixed-use commercial and residential development at 1124 W. El Camino Real proposed by DeAnza Properties (Applicant). The project includes ground floor retail along El Camino Real; 111 multi-family residential units above the retail and structured parking; and five two-story, single-family ownership homes located towards the rear of the property (for a total of 116 housing units). The multi-family units would occupy the third through seventh floors of the mixed-use building with 86 ownership units and (initially) 25 rental units. The Applicant is required to comply with the Below Market Rate (BMR) requirements, codified in Sunnyvale Municipal Code (SMC) Chapter 19.67 for ownership units and to comply with Chapter 19.75, Housing Impact Fees, for specified rental housing developments.

The original Planning application for this project was filed and determined to be a complete application prior to the reinstatement of BMR requirements for rental housing in November 2019, and therefore, the rental housing portion of the project is grandfathered in with a requirement to provide a Housing Impact Fee pursuant to SMC Chapter 19.75. As there were fewer than seven ownership units, the BMR requirement was not applicable to the five ownership units. After project approval in 2024, the developer decided to file a map to create ownership opportunities for the multi-family units in the main building with the intent to sell 86 of the units and retain ownership and rent the remaining 25 units.

SMC Chapter 19.75 requires new rental developments of four or more units (with a complete application or project approval *before* November 8, 2019) to pay a Housing Impact Fee. The application was determined to be complete prior to the November 8, 2019, deadline and was on hold while the El Camino Real Specific Plan and associated Environmental Impact Report (EIR) were prepared, and while site-specific studies were completed.

For ownership developments, SMC Chapter 19.67 requires that residential projects of seven or more ownership units provide 15% of the units in the project as BMR homes, affordable to moderate- or lower-income home buyers. Further, it allows the applicant to apply for City Council approval of an alternative compliance option, as defined in SMC Section 19.67.100, to satisfy the BMR requirements. The newly identified ownership units are subject to this BMR provision; the developer is seeking alternative compliance for 86 multi-family units and the five two-story, single-family ownership homes (91 units total); the 25 rental units would be subject to a Housing Mitigation Fee.

The Sunnyvale Municipal Code and the City's Administrative Policy require the Housing and Human

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Services Commission to review and make a recommendation to the City Council when an alternative compliance option is requested by an applicant.

On October 14, 2024, the Applicant filed an Alternative Compliance Plan application, Planning File No. 2024-0601, requesting City Council approval for the alternative compliance option of paying an in-lieu fee (ILF) rather than providing BMR ownership homes within the project. This ILF option is set forth in SMC Section 19.67.100(b), which allows Council discretion to approve or deny the Applicant's proposal to pay ILF to satisfy the BMR requirements for each project.

The Applicant has filed a revised tentative map for condominium purposes to create ownership housing units within the multi-family building, previously planned as all rentals. The Planning Commission will need to approve the tentative map to allow condominium ownership of the residential units, and once that is completed, staff will schedule a public hearing for the City Council to consider this item.

EXISTING POLICY

SUNNYVALE GENERAL PLAN HOUSING ELEMENT

Goal H-2: AFFORDABLE HOUSING AND HOME BUYER ASSISTANCE - Assist in the provision of affordable housing to meet the diverse needs of Sunnyvale's lower- and moderate-income households.

Policy H-2.1 Maximize Affordable Housing. Leverage local financial assistance with other sources of funding and identify new funding sources for affordable housing to maximize the number of affordable units and to reach the deepest level of affordability.

Policy H-2.4 Affordable Housing Mitigation. Continue to require office, market rate residential, retail, hotel, research and development, and industrial development to mitigate the demand for affordable housing.

ENVIRONMENTAL REVIEW

The action being considered is exempt from the provisions of the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15061(b)(3) in that the City Council finds there is no possibility that the implementation of this ordinance may have a significant effect on the environment.

DISCUSSION

1. BMR Ownership Housing Requirement

The Zoning Code defines "ownership housing" as a residential development where each dwelling unit is developed to be sold separately to a home buyer, primarily intended for owner-occupancy. BMR requirements apply to ownership housing projects of seven or more new ownership units. The standard requirement is for 15% of the ownership units to be provided as BMR homes.

The revised project includes 86 ownership units in the multi-family (and mixed-use) building and five two-story, single-family ownership homes, and thus has a BMR requirement of 13.65 BMR

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units (15% of 91 total ownership units). Fractional units may be rounded up to the nearest whole number, or a pro-rated in-lieu fee (ILF) may be paid by the applicant prior to issuance of the Building Permit.

Sunnyvale Municipal Code Chapter 19.67 allows developers the ability to seek City Council approval for one of several alternative compliance options, such as an ILF payment for the entire BMR obligation.

The ILF rate is currently equal to 7% of the final contract sales price of each market-rate home in the project; the fee is paid upon close of escrow of each home. Payment of this fee for each home in the project would fully satisfy the BMR requirement for the ownership component.

The Applicant is requesting City Council approval of the alternative to pay ILF for all ownership units in this project.

Estimated In-Lieu Fee Amount

Staff estimates the potential ILF revenue for the sale of the initial ownership units to be \$16,059,925, based on the estimated sales prices provided by the applicant and included in the Project Summary Table (Attachment 3). The actual ILF paid could be higher or lower than these estimates if local home values increase or decrease by the time these homes are sold. Should the alternative compliance be approved, the fees collected would be deposited into the Housing Fund, which is then used primarily to award loans for new affordable housing development.

Process for Collecting the BMR In-Lieu Fee

The requirement to pay the ILF is enforced by placing a Demand for Payment into escrow for the sale of each home to collect the ILF at the close of escrow. The escrow officer will send a check to the City for the ILF due from the sales proceeds of that home.

2. Housing Impact Fee for Rental Units

The project previously qualified for payment of a Housing Impact Fee for the rental housing units under Chapter 19.75. The applicant has indicated that 25 of the units will be initially rentals, even though there is an option for condominium sale of the units. No Council action is required for the rental units to pay a Housing Impact Fee. As there would be the option to sell the units in the future, the units would then be subject to the ownership BMR alternative compliance and pay the housing in-lieu fee at time of sale (with credit for the already paid rental Housing Impact Fee already paid).

The Housing Impact Fee rate is set by City Council as part of the Fee Schedule. The current fee for a large rental project (a development project with 8 or more units) is \$23.50 per applicable square foot.

Estimated Housing Impact Fee Amount

Staff estimates the potential Housing Impact Fee revenue for 25 rental units to be \$948,859.50, based on the estimated square footage of each unit as provided by the applicant and included in the Project Summary Table (Attachment 3).

Alternative Compliance History

Historically, most ownership projects in Sunnyvale provide on-site BMR units; there have been three

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single-family or duet (two ownership units sharing a wall) developments that have been approved to pay the ILF. In the last 20 years no rental projects have requested Alternative Compliance to pay an ILF rather than provide on-site units.

These alternative compliance requests have primarily been approved when a project consists of large homes or apartments, which can result in high ownership or rental costs for lower income households when factors such as utilities, insurance, and HOAs are considered. In such cases, more affordable housing units could be provided to assist more households through payment of an ILF, which the City would award to a non-profit development partner to construct new affordable units. The ILF can fund affordable projects where economies of scale, modest unit sizes, and higher density reduces the per-unit cost compared to that of market-rate units, allowing more affordable housing units to be created than what could be provided if build within the market rate development. Also, most affordable housing projects leverage local funds with federal tax credits or other sources that far exceed the local funding amount.

The demand for all types of affordable housing is very high; however, demand for affordable rentals outpaces demand for BMR homeownership opportunities due to a variety of factors such as more households qualify as lower income and do not have the financial means to purchase a home.

Alternative Compliance Options

The SMC 19.67.100 outlines several options as alternatives to satisfy the below market rate housing requirement.

- **Payment of an in-lieu fee** (developer's request).
- **Partnership with another developer providing affordable housing units** in another project (subject to several requirements).
- **Unit Conversion or Preservation Program.** The applicant may convert an existing market rate ownership or rental unit into deed-restricted affordable housing or preserve an expiring affordable housing development in compliance with specified terms.
- **Land Dedication.** Dedicate a parcel of land large enough to accommodate the project's inclusionary requirement plus thirty-five percent additional units
- **Other methods** of mitigating affordable housing may be approved at the sole discretion of city council.

A blended alternative could include granting an in-lieu fee for a portion of the units and requiring inclusionary units for the remainder. Alternatives other than the in-lieu fee could not be approved as part of the subject action as these options would require more work on the part of the developer. If the Housing and Human Services Commission does not recommend approval of the requested the in-lieu fee the commission could indicate a preference for one of the alternatives.

FISCAL IMPACT

If approved, staff estimates revenue of approximately \$17 million to the Housing Mitigation Fund (from the condominium and single-family home sales and the rental Housing Impact Fee). In the future, if the rented units are sold, additional revenue would likely be realized. The Housing Mitigation Fund can be used to assist one or various affordable housing projects with an emphasis on creating new affordable units for rent or purchase. The funds can also be used to fund rehabilitation projects, provide First Time Home Buyer loans, and/or create new affordable housing programs. Based on past loans, a loan of approximately \$17 million from the City could support and leverage the

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development of an affordable housing project with 100 to 200 new units. Approval of an Alternative Compliance Plan would have no impact on the General Fund.

Staff periodically issues Requests for Proposals for new affordable housing projects to be funded using BMR and/or other available Housing funds. Use of these Housing-related funds would be reviewed by the Housing and Human Services Commission and approved by City Council during the City's normal budgeting process or prior to awarding and funding proposals.

PUBLIC CONTACT

Public contact was made by posting the meeting agenda on the City's official-notice bulletin board at City Hall. In addition, the agenda and this report are available at the City Hall reception desk located on the first floor of City Hall at 456 W. Olive Avenue (during normal business hours), and on the City's website.

ALTERNATIVES

Recommend that the City Council:

1. Approve the Applicant's BMR Alternative Compliance Plan for the project located at 1124 W. El Camino Real as shown in Attachment 2 to this report.
2. Approve the Applicant's BMR Alternative Compliance Plan for the project located at 1124 W. El Camino Real, with modifications (such a blend of in-lieu fee and BMR units).
3. Do not approve the BMR Alternative Compliance Plan for the project and require the Applicant to comply with the inclusionary BMR requirements outlined in Sunnyvale Municipal Code.
4. Indicate a preference for another type of alternative compliance.

RECOMMENDATION

Recommend to City Council: Alternative 1.) Approve the Applicant's BMR Alternative Compliance Plan for the project located at 1124 W. El Camino Real as shown in Attachment 2 to this report.

Staff recommends approving the Alternative Compliance Plan, as requested, to allow payment of an In-Lieu Fee to satisfy the Inclusionary Housing requirements for the new ownership units in this project. A typical condominium development at a similar density, has about 950 square feet for a two-bedroom unit and about 1,350 square feet for a three-bedroom unit. The subject development averages about 1,900 square feet per unit (with three-bedroom units averaging 1,762 square feet without a den and 2,158 square feet with a den), making the unit sizes larger than average. In addition, stacked flat style condominiums can have a higher-than-normal HOA fee due to elevator expenses and more common space maintenance, which can be burdensome to lower income households. Through this Alternative Compliance Plan, the City would likely receive over \$17 million (or more) in Housing Impact Fees to use for new affordable housing projects and/or programs to be determined at a future date. This approach allows the City to use these funds to assist the City's non-profit partners develop a much larger number of extremely low-, very low- and low-income units in the community. As the project was previously expected to pay a Housing Impact Fee for the rental units, it was anticipated that the revenue would be available to support affordable housing developments elsewhere in the City.

LEVINE ACT

The Levine Act (Gov. Code Section 84308) prohibits city officials from participating in certain decisions regarding licenses, permits, and other entitlements for use if the official has received a campaign contribution of more than \$500 from a party, participant, or agent of a party or participant in

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the previous 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html

An "X" in the checklist below indicates that the action being considered falls under a Levine Act category or exemption:

SUBJECT TO THE LEVINE ACT

- ☒ Land development entitlements
- ☐ Other permit, license, or entitlement for use
- ☐ Contract or franchise

EXEMPT FROM THE LEVINE ACT

- ☐ Competitively bid contract*
- ☐ Labor or personal employment contract
- ☐ Contract under \$50,000 or non-fiscal
- ☐ Contract between public agencies
- ☐ General policy and legislative actions

* "Competitively bid" means a contract that must be awarded to the lowest responsive and responsible bidder.

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Reviewed by: Dennis Jaw, Assistant Director of Finance
Reviewed by: Matt Paulin, Director of Finance
Reviewed by: Sarah Johnson-Rios, Assistant City Manager
Approved by: Tim Kirby, City Manager

ATTACHMENTS

1. Reserved for Report to Council
2. Affordable Housing Compliance Plan
3. Project Summary
4. Site and Architectural Plans