



# City of Sunnyvale

## Agenda Item

---

**25-0503**

**Agenda Date: 5/28/2025**

---

### **REPORT TO HOUSING AND HUMAN SERVICES COMMISSION**

#### **SUBJECT**

Consider a Below Market Rate Alternative Compliance Plan for Residential Development at 777 Sunnyvale-Saratoga Road: 77Seven Housing Partners LLC, Planning File 2024-0621

#### **BACKGROUND**

On April 28, 2025, the Planning Commission approved Planning File 2023-0807 for a new residential development by 77Seven Housing Partners LLC ("Applicant") for 242 residential units, comprised of 80 ownership units and 162 rental units ("Project"). The Applicant is required to comply with the Below Market Rate (BMR) Housing requirements, codified in Sunnyvale Municipal Code (SMC) Chapter 19.67 and Chapter 19.77.

SMC Chapter 19.67 requires that residential projects of seven or more new ownership units provide 15% of the units in the project as BMR homes, affordable to moderate or lower-income home buyers. SMC Chapter 19.77 requires that residential projects of three or more new rental units provide 15% of the units in the project as BMR homes, affordable to low- and very low-income renters. Both chapters allow an applicant to apply for City Council approval of an alternative compliance option, after approval of the project, as defined in SMC Section 19.67.100 and 19.77.100, to satisfy the BMR requirements.

The City's Administrative Policy Chapter 1 - General Management Article 24 - Review and Approval of Affordable Housing Alternative Compliance Plans, requires the Housing and Human Services Commission to review and make a recommendation to City Council when an alternative compliance option is requested by an applicant.

In July 2024, the Applicant completed the Affordable Housing Compliance Plan and included a formal letter (Attachment 2) requesting an alternative compliance to dedicate land to the City in lieu of providing the required BMR units. The land to be dedicated would accommodate an affordable housing development with 160 rental units affordable to households earning between 30-60% area median income and two manager units.

The City Council is scheduled to consider this item on June 17, 2025.

#### **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.

25-0503

Agenda Date: 5/28/2025

**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-2.2 Below Market Rate Housing Program.** Continue to implement and consider revisions to the Below Market Rate (BMR) Housing program to increase the amount of affordable housing built in the city, while ensuring the program remains consistent with current market trends, does not impede development, and is appropriate for the Bay Area region.

**Policy H-2.3 Integration of Below Market Rate Housing.** Utilize the Below Market Rate (BMR) Housing requirements as a tool to integrate affordable units within market rate developments and increase the availability of affordable housing throughout the community.

### **ENVIRONMENTAL REVIEW**

A program-level environmental impact report was prepared for the El Camino Real Specific Plan ("ECRSP EIR") which identified broad environmental impacts resulting from proposed development intensities in the plan area in which the 777 Sunnyvale Saratoga Rd project site is also located. The City Council certified the ECRSP EIR on June 28, 2022 and adopted required findings under the California Environmental Quality Act ("CEQA"), a mitigation monitoring and reporting program with required measures to reduce potentially significant environmental impacts, and a statement of overriding considerations acknowledging that some impacts remained significant and unavoidable but identifying overriding reasons to approve the plan. The environmental impacts of the subject project are within the scope of and consistent with the ECRSP EIR, as documented in the environmental consistency checklist prepared for the project, which evaluated both the base project with standard BMR compliance considered by the Planning Commission and the project with alternative BMR compliance now being considered by the Housing and Human Services Commission and the City Council. Pursuant to CEQA Guidelines Section 15183, no additional environmental review is required.

### **DISCUSSION**

In accordance with the City's Inclusionary Housing requirements for ownership and rental residential development, the Project has the following inclusionary requirements, as incorporated in the Project approved by the Planning Commission:

- Ownership units: Project includes 80 ownership units; 15% BMR requirement would be 12 units for moderate income households.
- Rental Units: Project includes 162 rental units; 15% BMR requirement would be 24 units for very low- and low-income households.

Under the City's process, a project that is compliant with the standard BMR requirements must be approved before any alternative compliance requests can be considered to modify the project.

### **Alternative Compliance Request**

Pursuant to the Applicant's July 2024 project submittal, the Applicant has submitted a formal Alternative Compliance Request under Sunnyvale Municipal Code Sections 19.67.100(f) and 19.77.100(f) which both provide that "[o]ther methods of mitigating affordable housing may be approved at the sole discretion of city council."

**25-0503**

**Agenda Date: 5/28/2025**

The applicant is requesting to dedicate a 1.456-acre parcel to the City which can accommodate the 162 (+/-) rental units. The rental development would be designed and entitled by the Applicant and then the land would be dedicated to the City prior to issuance of any building permits for the ownership development. Dedication of land is intended to meet the requirements of all inclusionary obligations.

Once the City obtains ownership of the dedicated parcel, the City would be responsible for issuing a competitive Request for Proposals to obtain a non-profit affordable housing developer partner to construct and manage the development.

The rationale behind most alternative compliance options in SMC Chapter 19.67 and Chapter 19.77 is largely the same: to provide a greater number of affordable housing units to more households than could be achieved through the standard compliance option. Often these alternatives result in deeper income-targeting of the units, serving very low- or even extremely low-income households.

The Applicant's proposal to dedicate a parcel with an entitled 162-unit development results in 124 units more than what would have been required under the standard inclusionary requirement, or a 340% increase to the inclusionary requirement. In addition, dedication of this parcel would accommodate deeper affordability. The rental development would have units available for extremely low-, very low- and low-income household.

If in-lieu fees were approved for this development, it would be valued at approximately \$8.4M for ownership and \$5M for rental for a total of approximately \$13.4M. Based on a recent report for Sunnyvale residential land sales (prepared to determine land values for park dedication in-lieu fees) unentitled land averaged approximately \$175 per square foot. In December 2024, the City purchased a site on Sonora Court for affordable housing (a slightly smaller site with a slightly higher density) and the value was about \$221 per square foot (\$12.5M for the entire site). Using that land value the alternative compliance is worth about \$14M. In the subject case the demolition of the buildings on the site and some of the rough grading are included; there project includes land use entitlement, the apartments will benefit from a shared private road out to Sunnyvale Saratoga Road (and the townhomes will have access to Mathilda); and pedestrian access is provided out to Sunnyvale Saratoga Road. All of these features add value to the property. The value land for an entitled affordable housing development exceeds the amount the City would receive if in-lieu fees were accepted for the site.

The level of unmet demand for all types of rental housing affordable to lower-income households, particularly very low-income households, far exceeds the unmet demand for moderate-income, BMR for-sale housing. This is because a larger segment of the population is in the lower-income ranges, and very few market-rate homes or rentals are affordable to lower-income households.

Updates to the Conditions of Approval for the development approved by the Planning Commission will be included in the Report to Council for consideration. If the alternative compliance request is approved, these updates will reflect the modified project to ensure appropriate Conditions are applied to the ownership and rental portions of the project.

#### Project Details

The project site is located in a mixed-use zoning district of the El Camino Real Specific Plan with the proposed affordable apartments on the Mathilda side of the property. The apartments are within a

**25-0503**

**Agenda Date: 5/28/2025**

short walking distance (less than a third of a mile) of two shopping centers: 1) Cherry Orchard at 300-390 W El Camino Read which currently includes a Trader Joe's grocery store; and, 2) 108-170 E El Camino Real which includes a Safeway grocery store. The site is also close to north/south and east/west VTA bus lines with stops on Sunnyvale-Saratoga Road and El Camino Real. The Applicant indicates that consultation with affordable housing developers is reflected in the design of the apartment building.

If alternative compliance is approved, resulting in 67% of the units as affordable, then the site would qualify for the recently adopted program for adjusted commercial development requirements for mixed use sites in the El Camino Real Specific Plan area. Due to its location (no frontage on El Camino Real) and providing greater than 66% of the units as affordable, there would be no minimum commercial requirement.

### **FISCAL IMPACT**

If approved, there is no fiscal impact to the General Fund or to the Housing Mitigation Fund initially. There could be an impact to Housing Mitigation Fund at a future date if the non-profit housing developer requests City funding to develop this new rental project. The alternative compliance would allow for the rental development to be exempt from Park Fees and would remove the requirement for commercial/retail uses which eliminates potential retail sales tax. The reduction in potential sales tax revenue was acknowledged when the program was adopted on October 15, 2024 (RTC No. 24-0953).

### **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 777 Sunnyvale-Saratoga Road as shown in Attachment 2 to this report.
2. Approve the Applicant's BMR Alternative Compliance Plan for the project located at 777 Sunnyvale-Saratoga Road as shown in Attachment 2 to this report, with modifications.
3. Do not approve the BMR Alternative Compliance Plan for the project and require the Applicant to comply with the BMR requirements outlined in Sunnyvale Municipal Code.

### **RECOMMENDATION**

Alternative 1: Recommend City Council Approve the Applicant's BMR Alternative Compliance Plan for the project located at 777 Sunnyvale-Saratoga Road as shown in Attachment 2 to this report.

Staff recommends approving the Alternative Compliance Plan and to allow the dedication of land to the City (adjacent to the ownership parcel) for an affordable housing project aimed at providing 160 affordable housing units for incomes between 30-60% area median income. These units are generally restricted for 55 years or more depending on financing.

Through this Alternative Compliance Plan, the City would receive land that accommodates well over

**25-0503**

**Agenda Date: 5/28/2025**

the number of affordable housing units that would have been required for this project. This approach allows the City to leverage the land to partner with a non-profit developer to build a much larger number of extremely low-, very low- and low-income units in the community. The site is well located near transit and shopping which adds to its desirability for affordable housing.

### **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 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](http://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.

Prepared by: Ernie Defrenchi, Affordable Housing Manager  
Reviewed by: Jenny Carloni, Housing Officer  
Reviewed by: Trudi Ryan, Director, Community Development  
Reviewed by: Connie Verceles, Deputy City Manager  
Approved by: Tim Kirby, City Manager

### **ATTACHMENTS**

1. Reserved for Report to Council
2. Affordable Housing Compliance Plan and Letter