

RESPONSE TO COUNCIL QUESTIONS RE: 10/3/17 CITY COUNCIL AGENDA

Agenda Item #: 2

Title: Consider Below Market Rate Alternative Compliance Plans for Residential Developments at 803 W. El Camino Real (Pastoria Corners) and 871 E. Fremont Avenue (Butcher's Corner). Applicant: De Anza Properties; Planning Files 2016-7568 and 2016-7569
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Council Question: Have we had previous projects where the developer has paid the full ILF instead of providing BMRs? (if so, how many units, what was the final fee?) Of the for-sale multi-unit projects over the last few years, how many have paid ILF fees for fractional units vs the number of BMR units provided?

Staff Response: Prior to the current regulations being updated in 2012, there were few (but at least one) small for-sale projects required to provide one BMR home that paid an In-Lieu Fee (ILF) instead of providing that home. Prior to 2012, the ILF was available only to projects with less than 20 units, and it was the developer's choice to provide the home or pay the fee, without Council approval. Also, there was no fractional fee requirement prior to 2012. The apartments at 101/Lawrence (now called Avalon) paid the ILF in 1995, as allowed by the Specific Plan for that site. Since 2012, no new projects have applied for approval to pay the ILF for their entire BMR obligations, however most projects have paid the fractional ILF rather than round up a unit. There have been one or two cases where the fraction was 0.8 and the developer opted to round up to the next whole unit rather than pay the fractional ILF.

Council Question: Staff said that there is a lottery on the high-end BMRs, but aren't they required to do the lottery on most BMR sales processes? Can Staff give some examples of the number of applicants for the last few periods of going through the BMR allocation process?

Staff Response: The BMR Homeownership Program Guidelines allows staff discretion to use various sales processes, such as a lottery, a waiting list, and/or first-come, first-served. Staff bases the approach (for soliciting buyers) on the level of demand among eligible applicants in the most recent year or so. A handful of lotteries have been held, primarily for single-family detached homes or high-end townhomes in highly desirable school districts. In the last four to five years when staff has conducted lotteries, about 20-30 applications have been received. Part of the reason the number is lower than one might expect is that the applicants are pre-screened, so that only those with an approved BMR eligibility certificate are placed into the lottery.

For most BMR townhomes and condos, staff uses a first-come, first-served basis among pre-screened applicants, after having tried using a more structured, long-term waiting list in the past which resulted in a lot of disgruntlement among buyers, because they were not given much discretion in which home they were able to purchase (buyers have strong preferences to buy in specific neighborhoods or school districts). The current process is set up so that prospective buyers may apply for the program at any time, but may only submit an offer on a listing if they have previously submitted an eligibility application and received an eligibility certificate from staff. When new BMR homes are listed for sale or BMR homeowners list their BMR home for

resale, the current process is that staff sends an email notice of the new listing to the BMR interest list, which includes approximately 1,500 interested parties, and to those who have a current BMR eligibility certificate, which are good for only 90 days. The first prospective buyer with an eligibility certificate to contact the listing agent and/or arrive in the sales office and who is ready and able to sign the sales contract and put down the initial good faith deposit (usually \$1,000) is allowed to enter into contract for that home. If they fall out of escrow for whatever reason (which rarely happens), the next party to have contacted the sales agent will be offered the home, or if necessary staff will send out a second notice. In the last several years, staff has typically reviewed and approved approximately 40 home buyer applications per year. However, in the years during the recession (2009-2011) the number of buyers was much lower and staff struggled to find buyers for many of the BMR homes. Staff also tries to provide prospective buyers with the best real-time information about the pipeline of homes available, so that they can wait to submit their application until about 90 days before the home(s) they are interested in will be available. The BMR website provides information on the pipeline, and is updated every two weeks with the latest information from sellers.

<http://cityofsunnyvale.maps.arcgis.com/apps/MapTour/index.html?appid=aa19a06eabf3421d80dca9946e4ebaf3>

Council Question: The Staff report says: “The ILF rate is set at 7% of the contract sales price of each market-rate home in the project.” So the fee is not collected until all units are sold? Or fee is taken on the initial list price of all units? Or does Staff only evaluate fee after all units have been sold?

Staff Response: Per the Municipal Code, the fee is 7 percent of the final sales price of each unit. The fee is collected as part of each sales transaction by the City placing a Demand for Payment into escrow for 7 percent of the final sales price. When the escrow closes for each unit, the City receives payment. Staff does not collect the fee until the units are sold because until close of escrow, it is not certain what the final contract sales price will be, as sales negotiations, inspections, etc. can change this figure even after escrow opens. For projects that are only paying the fractional ILF, the developer pays a deposit based on an estimate of the fee total, and that figure is reconciled after all units have sold, with coordination between staff and the escrow officer and seller.

Council Question: If a Condo Conversion is done at a later time, and the BMR rate goes up in the meantime, (if this proposed agreement wasn’t in place) would the developer need to pay ILF/set aside units at that time based upon the new rate, or is the conversion application now, locking in the BMR percentage? Condo conversions are normally seen as creating new for-sale housing, and would they need to meet the BMR requirements at the time of conversion?

Staff Response: If BMR requirements change in the future, the City cannot retroactively apply those new requirements to a project that was previously approved and built. The specific units are locked in at the final map stage and are referenced in the Affordable Housing Agreement which is recorded against the property prior to issuance of building permits. A change in the BMR regulations does not change the BMR obligations of the site.