



# City of Sunnyvale

## Agenda Item

19-0459

Agenda Date: 4/17/2019

### REPORT TO HOUSING AND HUMAN SERVICES COMMISSION

#### **SUBJECT**

Consider a Below Market Rate Alternative Compliance Plan for Residential Development at 1142 Dahlia Court. Applicant: Trumark Homes; Planning Files 2018-7989 and 2018-7451.

#### **BACKGROUND**

In March, 2019, the Planning Commission approved a new residential development proposed by Trumark Homes for 58 single-family homes at 1142 Dahlia Court, aka "The Corn Palace", Planning File 2018-1055. The Conditions of Approval require compliance with the Below Market Rate Housing requirements (BMR), codified in Sunnyvale Municipal Code (SMC) Chapter 19.67 (Chapter 19.67).

SMC Chapter 19.67 requires that residential projects of eight or more new ownership units provide 12.5% 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 19.67.090, to satisfy the BMR requirements. Additionally, the City's Administrative Policy 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.

Prior to the public hearing date for this project with the Planning Commission, the Applicant filed an application, Planning File 2018-7989, requesting City Council approval for the alternative compliance option of paying BMR in-lieu fees (ILF) rather than providing BMR homes within the project. This ILF option is set forth in SMC Section 19.67.090(b), while SMC Section 19.67.090 (a) allows Council discretion to approve or deny the Applicant's proposal to pay ILF to satisfy the BMR requirements for each project.

The City Council is scheduled to consider this item on May 21, 2019.

#### **EXISTING POLICY**

Sunnyvale General Plan, Housing Element

**Goal A:** Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale's households of all income levels.

**Policy A.3:** Utilize the 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**

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(a) as it has no potential for resulting in either a direct physical change in the environment, or a reasonably

foreseeable indirect physical change in the environment.

### **DISCUSSION**

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 eight or more new ownership units (e.g., single-family homes, townhouses, or condominiums). The standard requirement is for 12.5% of the ownership units in such projects to be provided as BMR homes. The BMR requirement for the Corn Palace site would equal 7.25 BMR 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 to seek City Council approval of one of several alternative compliance options, such as an ILF payment for the entire BMR obligation.

The ILF rate is set at 7% of the final contract sales price of each market-rate home in the project. Payment of this fee for each home in the project would fully satisfy the BMR requirement for that component. The applicant is requesting City Council approval of the alternative to pay ILF for all units in this project.

### **Estimated In-Lieu Fee Amount**

Staff estimated the potential ILF revenue to be \$10,400,000, based on the Market Feasibility Study of potential home prices, provided by the applicant and included in this report as Attachment 2. 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.

### **Process for Collecting the BMR In-Lieu Fee**

The requirement to pay the ILF is enforced by recording a BMR Developer Agreement against each property within the project, creating a lien against title until the BMR requirements are satisfied in full. With the ILF option, staff also places a Demand for Payment into escrow for the sale of each home to collect the ILF. At the close of escrow of each new home, the escrow officer will send a check to the City for the ILF due from the sales proceeds of that home. Staff then provides a partial lien release for the escrow officer to record, releasing that home from requirements of the BMR agreement. This process repeats until all the homes in the project are sold.

### **Considerations Related to Use of In-Lieu Fee as Alternative Compliance Plan**

Historically, most ownership projects in Sunnyvale provide on-site BMR units, even in single-family developments, and pay ILF only for fractional units. This project is the third to apply for City Council approval of any alternative compliance option since those options were created through amendments to the SMC adopted in 2012. On October 3, 2017, City Council approved two Alternative Compliance Plan requests for payment of an ILF rather than provide on-site BMR units.

SMC Chapter 19.67 does provide additional compliance options available to the Applicant. The rationale behind most of these alternatives 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 also result in deeper income-targeting of the units, serving very low or even extremely low income households, for example.

These alternatives are most preferable when a project consists of large, luxury, expensive homes. In

**19-0459****Agenda Date: 4/17/2019**

such cases, more units of affordable housing could be provided to assist more households through payment of an ILF, which the City would award to a non-profit development partner, compared to the standard compliance option. 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. Also, most affordable projects leverage local funds with federal tax credits or other sources that far exceed the local funding amount, often by a 6:1 ratio, so the impact of the ILF can be much greater.

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.

The standard BMR compliance option in higher-priced, luxury projects can also create difficulties for staff in handling the sale of very few, highly desirable BMR homes, given the high demand. In these cases, staff would hold a lottery, which is often time intensive for staff and stressful for potential buyers. In addition, large and luxury homes, while sold at BMR prices, are extremely expensive to maintain and insure for a household at a lower income level and can often cause a financial burden they may have been unaware of.

For the above reasons, some housing policy advocates assert that, particularly in cases of projects of larger, higher-priced homes, greater public benefit results from using ILF payments to assist many more households, and often with greater need for assistance, than could benefit from a few BMR homes provided within the project.

### **FISCAL IMPACT**

If approved, staff estimates that the Alternative Compliance Plan for Corn Palace could result in total revenues of approximately \$10.4 million, deposited to the BMR sub-fund of the Housing Special Revenue Fund (70-200). This Fund can be used to assist various affordable housing projects with an emphasis on creating new affordable units for rent or sale. The funds can also be used to fund rehabilitation projects, provide First Time Home Buyer loans, and create new affordable housing programs. The 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 through posting of the Housing and Human Services Commission agenda on the City's official-notice bulletin board, on the City's website, and the availability of the agenda and report in the Office of the City Clerk.

### **ALTERNATIVES**

1. Recommend City Council approval of the Applicant's BMR Alternative Compliance Plan project located at 1142 Dahlia Court, as shown in Attachment 2 to this report.
2. Recommend City Council approval of the Applicant's BMR Alternative Compliance Plan project

**19-0459****Agenda Date: 4/17/2019**

located at 1142 Dahlia Court, with modifications.

3. Do not recommend City Council approval of the BMR Alternative Compliance Plan the project and require the Applicant to comply with the BMR conditions of approval by providing BMR units within the project, or other alternative specified by City Council.

**STAFF RECOMMENDATION**

Alternative 1) Recommend City Council approval of the Applicant's BMR Alternative Compliance Plan project located at 1142 Dahlia Court, as shown in Attachment 2 to the report

Staff recommends approving the Alternative Compliance Plan, as requested, to allow payment of an In-Lieu Fee to satisfy the Inclusionary Housing requirement for the Corn Place project. Through this Alternative Compliance Plan, the City would receive over \$10 million to use for new affordable housing projects to be determined at a future date. This approach allows the City to use these funds to assist our non-profit partners develop a much larger number of extremely low, very few, and low income units in our community.

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Reviewed by: Trudi Ryan, Director, Community Development

Reviewed by: Teri Silva, Assistant City Manager

Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. *Reserved for Report to Council*
2. Corn Palace Market Feasibility Analysis
3. BMR Alternative Compliance Plan