

Tuesday, September 24, 2019.

4. [19-0931](#) Introduce an Ordinance to add Chapter 19.77 ("Inclusionary Below Market Rate Rental Housing") to Title 19 ("Zoning") of the Sunnyvale Municipal Code to create an Inclusionary Rental Housing Program, and adopt a Resolution to amend the Master Fee Schedule and create a Rental Housing In-Lieu Fee.

Housing Officer Jenny Carloni presented the staff report.

Vice Chair Simons asked Housing Officer Carloni if the in-lieu fees would fund affordable housing-only developments or fund affordable housing within existing developments. Housing Officer Carloni answered that as opposed to the inclusionary requirement, the housing mitigation funds are awarded to non-profit developers who build affordable housing-only developments. Vice Chair Simons stated his interest in combining affordable housing and non-affordable housing units within developments as much as possible.

Commissioner Olevson stated his concern that the in-lieu fee would raise the cost of building in Sunnyvale. Housing Officer Carloni responded that development has not slowed since the ordinance was created in 1980 and that neighboring cities enact similar programs. Commissioner Olevson stated that private right of action has been overused by the legal profession and asked staff why it is included in Section 19.77.120(c) of the proposed ordinance. Senior Assistant City Attorney Rebecca Moon stated that it is a common provision in housing-related ordinances and allows people to exercise their rights without the City incurring enforcement costs and added that she is not familiar with the abuse of that provision.

Chair Howard confirmed with Housing Officer Carloni that the in-lieu fee is a one-time fee collected prior to building permit issuance, is calculated based on the habitable square footage of the entire development, and developers must dedicate 15% of the total units to affordable housing if they don't pay the in-lieu fee. Chair Howard asked Housing Officer Carloni what in-lieu fee the 2015 nexus study recommended. Housing Officer Carloni stated that it recommended a fee closer to \$50 per habitable square foot. He also asked how the proposed ordinance and in-lieu fee relate to Section 8 housing. Housing Officer Carloni responded that they do not have an impact on Section 8 which is administered by the County and that the vouchers would continue to be accepted by participating landlords. Chair Howard confirmed with Housing Officer Carloni that the Housing Division works with developers to ensure that below market rate units are evenly dispersed throughout the development, equally sized, renovated on the same schedule, and to the same

quality as non-affordable housing units.

Commissioner Rheume confirmed with Housing Officer Carloni that the Option 2 in-lieu fee gives the City 25% of what is needed to build one housing unit.

Commissioner Rheume asked what option gives developers the most flexibility and Housing Officer Carloni stated that Section 19.77.100 of the proposed ordinance addresses alternative compliance options, including an open-ended option. He confirmed with Housing Officer Carloni that neighboring cities have had existing inclusionary rental housing ordinances but began enforcing them in 2017.

Commissioner Harrison confirmed with Housing Officer Carloni that the existing housing mitigation fee would be replaced by the proposed in-lieu fee once all of the proposed projects in the pipeline have paid their housing mitigation fees but that all commercial developments will remain subject to it. Commissioner Harrison confirmed with Housing Officer Carloni that the program is anticipated to take effect on November 8, 2019 and together they discussed the status of larger proposed housing projects that might not be deemed complete by that date. Principal Planner Noren Caliva-Lepe stated that the Planning Division has been notifying the developer community of the proposed ordinance and in-lieu fee.

Commissioner Olevson confirmed with Housing Officer Carloni that the in-lieu fee is based on the habitable square footage of an entire development and that Tables 2 and 3 in the staff report break down the in-lieu fee per square foot and per unit, respectively.

Chair Howard confirmed the alternative recommendations with Housing Officer Carloni.

Chair Howard opened the Public Hearing.

Travis Duncan, representing Sares Regis, stated his support for the staff recommendation and requested that the Commission grandfather in the CityLine development into the existing ordinance given the time and work it has taken to amend the Downtown Specific Plan.

Commissioner Howe stated his belief that grandfathering CityLine in to the existing ordinance is a policy decision better made by the City Council. Mr. Duncan responded that he would appreciate the Commission's recommendation to the City Council.

Brennan Robins, Sunnyvale resident and representative of Greenbelt Alliance, spoke in support of a strong inclusionary housing ordinance and an in-lieu fee that reflects the actual cost of building affordable housing.

Dennis Martin, representing BIA Bay Area, requested that the Commission recommend conducting market rate housing feasibility studies so that the cost of housing does not increase and suggested flexible alternatives for developers.

Commissioner Harrison confirmed with Mr. Martin that a weighted average of 80% would allow developers to produce moderate rate units and more feasibly build lower rate units and that reductions in parking standards promote project feasibility.

Vice Chair Simons confirmed with Mr. Martin that the development community supports separating parking requirement from unit requirements.

Commissioner Rheume asked Mr. Martin if it would be feasible for developers to provide a 60% weighted average if the suggested incentives are available to them. Mr. Martin responded that this would be possible for developers if the City provides enough of the right type of incentives and added that there are too many variables to estimate by how much developers' costs would rise with the in-lieu fees.

Chair Howard closed the Public Hearing.

Commissioner Howe confirmed with Housing Officer Carloni how the in-lieu fees are calculated.

Commissioner Rheume confirmed with Senior Assistant City Attorney Moon that it is within the Commission's purview to recommend to the City Council that it grandfather in CityLine into the existing ordinance.

Vice Chair Simons asked Housing Officer Carloni if it would be possible for staff to define what percentage of below market rate units would qualify neighborhoods and developments as predominantly below market rate in order to avoid them being perceived as dedicated only to below market rate. Housing Officer Carloni stated that it is difficult for most to distinguish affordable housing developments from market rate developments and that the demand for affordable housing is great. Vice Chair Simons stated that he is looking towards the future and for ways to improve inclusionary housing. Housing Officer Carloni added that there is a Housing

Element policy that aims to distribute affordable housing throughout the community and that affordable housing-only developments can better offer needed services to residents.

Commissioner Harrison asked how the proposed ordinance and the Housing Element are related and Housing Officer Carloni stated that non-profit developers have access to unique funding sources that market rate developers find advantageous. Commissioner Harrison confirmed with Housing Officer Carloni that the alternative and open-ended compliance plans are viable for developers and that incentives and concessions would still be available to them as part of State density bonuses. Commissioner Harrison asked if CityLine would be subject to the proposed ordinance and in-lieu fee given that it is currently in negotiations with the City. Principal Planner Michelle King responded that it is possible that the intent of the proposed ordinance could be applied to the development agreement negotiated.

Commissioner Howe asked staff what the cost difference would be for CityLine if it were subject to the existing ordinance versus the proposed ordinance. Housing Officer Carloni stated that the staff recommended impact fee is a few dollars more than the existing impact fee and developers' costs might therefore rise by approximately ten percent.

Chair Howard stated that he appreciates Vice Chair Simons's comments championing combining market rate and below market rate units within developments and asked Housing Officer Carloni how operating costs are met for affordable housing-only developments. She responded that the non-profit developers have a variety of funding sources to meet their operating needs and that the housing mitigation funds could be diverted towards operational needs for a limited time if the City Council approves. Chair Howard stated the years it might take for a developer to recoup costs from the in-lieu fee and added that \$30 is a conservative fee considering the nexus study proposal and what the City might have collected in the 1980s.

MOTION: Commissioner Howe moved and Commissioner Harrison seconded the motion for Alternative 4 - Approve a Resolution to amend the Master Fee Schedule and create a new Small Rental Project In-Lieu Fee of \$12.50 per habitable square foot and a new Large Rental Project In-Lieu Fee of \$25.00 per habitable square foot, adjusted annually as part of the City Fee Schedule [Attachment 4 to the report] and Alternative 2 - Introduce an ordinance to add Chapter 19.77 ["Below Market Rate Rental Housing"] to Title 19 ["Zoning"] of the Sunnyvale Municipal

Code to create Inclusionary Rental Housing Requirements, with the following modifications:

1.) Recommend to the City Council that it explores the possibility of grandfathering in CityLine into the existing ordinance due to the length of time they have been in process.

Commissioner Howe stated that there should be inclusionary housing in Sunnyvale, that this approach is a reasonable way to obtain low and very low income units, and that the City Council should consider giving CityLine some relief from the proposed ordinance because it is higher than the existing ordinance and because of the long, slow history of the development in downtown.

Commissioner Rheume stated that it would be ideal to have affordable housing and market rate units in every development but that non-profit developers are crucial to getting the affordable housing needed as everything is ultimately dependent on developers' costs. He added that he will support the motion.

Vice Chair Simons stated that the rate of development has caused housing costs to rise significantly in Silicon Valley and that the proposed ordinance and in-lieu fee would not solve the problem. He commented that he would like to see zoning changes to increase density near mass transit and stated that he will not support the motion.

Chair Howard stated that he appreciates Vice Chair Simons's comment regarding increasing density and that Sunnyvale is making progress toward changing zoning to increase density. Chair Howard stated that the free market does not provide adequate housing for people with lower incomes and therefore inclusionary housing is a good strategy. He added that while he does not like that developers can avoid providing affordable housing by paying an in-lieu fee, he believes the fee is not high enough. He also commented that he believes that City Council will appropriately address CityLine's obligations in the developer agreement.

Principal Planner Caliva-Lepe confirmed the motion with Commissioner Howe.

The motion carried by the following vote:

**Yes: 3 -** Commissioner Howe  
Commissioner Harrison  
Commissioner Rheume

**No:** 3 - Chair Howard  
Commissioner Olevson  
Vice Chair Simons

**Absent:** 1 - Commissioner Weiss

Commissioner Olevson stated that his concerns are the in-lieu fee that would raise developer costs when land is already so expensive and the private right of action reference in the proposed ordinance that easily allows individuals to sue developers.

Vice Chair Simons asked staff if the private right of action reference is optional in the proposed ordinance and if it is possible for the City to address individuals' impending litigation. Senior Assistant City Attorney Moon stated that it is a common provision in modern housing ordinances and that it is useful as the City cannot always enforce all the laws on its own because of available resources. She added that she is not aware of private right of action abuse in the context of this type of ordinance and that she believes it would be an unlikely occurrence.

Commissioner Olevson stated that he foresees attorneys abusing it and therefore cannot support the provision.

MOTION: Vice Chair Simons moved and Commissioner Harrison seconded the motion for Alternative 5 - Approve a Resolution to amend the Master Fee Schedule at a different amount than in Alternative 4 to \$13.75 per habitable square foot for the Small Rental Project In-Lieu Fee and \$27.50 per habitable square foot for the Large Rental Project In-Lieu Fee and Alternative 2 - Introduce an ordinance to add Chapter 19.77 ["Below Market Rate Rental Housing"] to Title 19 ["Zoning"] of the Sunnyvale Municipal Code to create Inclusionary Rental Housing Requirements, with the following modifications:

- 1.) Explore the possibility of removing the private right of action reference in Section 19.77.120(c) of the proposed ordinance to reduce frivolous civil action; and
- 2.) Give consideration for the impacts of the proposed ordinance on CityLine.

Commissioner Harrison stated that she believes the Commission should make a recommendation to the City Council in the affirmative and that the motion is a good compromise.

Chair Howard stated that he prefers a \$30 in-lieu fee but that he would be satisfied if the motion passed.

The motion carried by the following vote:

**Yes:** 3 - Commissioner Harrison  
Commissioner Rheaume  
Vice Chair Simons

**No:** 3 - Chair Howard  
Commissioner Howe  
Commissioner Olevson

**Absent:** 1 - Commissioner Weiss

Commissioner Howe stated that he does not want the in-lieu fee to go up and that there is already an adjustment for inflation. He confirmed with Senior Assistant City Attorney Moon that the private right of action provision can probably be rewritten to state that the City must provide a prospective plaintiff a Notice of Right to Sue before a lawsuit could be filed against a developer.

Commissioner Howe confirmed with Commissioner Olevson that he is familiar with Notice of Right to Sue.

Commissioner Olevson stated that he would be more comfortable with the proposed ordinance rewritten to replace the private right of action provision with a Notice of Right to Sue provision.

**MOTION:** Commissioner Howe moved and Commissioner Olevson seconded the motion for Alternative 4 - Approve a Resolution to amend the Master Fee Schedule and create a new Small Rental Project In-Lieu Fee of \$12.50 per habitable square foot and a new Large Rental Project In-Lieu Fee of \$25.00 per habitable square foot, adjusted annually as part of the City Fee Schedule [Attachment 4 to the report] and Alternative 2 - Introduce an ordinance to add Chapter 19.77 ["Below Market Rate Rental Housing"] to Title 19 ["Zoning"] of the Sunnyvale Municipal Code to create Inclusionary Rental Housing Requirements, with the following modifications:

1.) Recommend to the City Council that it explores the possibility of grandfathering

in CityLine into the existing ordinance due to the length of time it has been in the process; and

2.) Amend Section 19.77.120(c) of the proposed ordinance that addresses private right of action to specify that the City must provide a prospective plaintiff a Notice of Right to Sue before a lawsuit could be filed against a developer.

The motion carried by the following vote:

**Yes:** 4 - Commissioner Howe  
Commissioner Harrison  
Commissioner Olevson  
Commissioner Rheume

**No:** 2 - Chair Howard  
Vice Chair Simons

**Absent:** 1 - Commissioner Weiss

This recommendation will be forwarded to the City Council for consideration at the September 24, 2019 meeting.

5. [19-0761](#)

**CONTINUED FROM AUGUST 12, 2019 AND AUGUST 26, 2019.**

**Proposed Project:**

**MAJOR MOFFETT PARK DESIGN REVIEW PERMIT:** to construct a new four-story 123,595 s.f. office building and associated site improvements resulting in a 47% FAR

**Location:** 1389 Moffett Park Drive (APN: 110-37-002)

**File #:** 2018-8050

**Zoning:** MP-I (Moffett Park Industrial)

**Applicant / Owner:** RMW Architecture & Interiors (applicant) / WP Carey & Harvest Properties, Inc. (owner)

**Environmental Review:** Mitigated Negative Declaration

**Project Planner:** Ryan Kuchenig, 408-730-7431, rkuchenig@sunnyvale.ca.gov

**MOTION:** Vice Chair Simons moved and Commissioner Rheume seconded the motion to make the findings in Attachment 3, adopt the Mitigated Negative Declaration, and approve Alternative 2 - Approve the Major Moffett Park Design Review Permit with the following modifications:

- 1.) Plant the longest living, largest species trees away from the parking areas;
- 2.) Use faster-growing, larger canopy trees in the parking lot;