



# City of Sunnyvale

## Agenda Item

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21-0631

Agenda Date: 6/14/2021

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### REPORT TO PLANNING COMMISSION

#### **SUBJECT**

Recommendation to City Council to Introduce an Ordinance Amending Chapter 19.67 (Below Market Rate Ownership Housing) of the Sunnyvale Municipal Code to Modify the Inclusionary Housing Program.

#### **BACKGROUND**

In 1980, Sunnyvale adopted the first Affordable Housing requirements, also known as the Below Market Rate (BMR) Program. The original program required 10% of the dwelling units to be affordable and distributed throughout a new development; this type of program is also called inclusionary zoning. Over time, several minor amendments to the BMR program were approved by City Council. Major changes were made in 2003 and 2012.

In 2003, after a comprehensive review of the BMR program, the Sunnyvale Municipal Code (SMC) was modified to increase the percent of units required to be dedicated as affordable from 10% to 15% for rental developments and to 12.5% for ownership developments (RTC No. 02-392 and RTC No. 03-031). The length of time for units to remain as Below Market Rate units was increased from 20 years to 30 years for ownership units and from 20 years to 55 years for rental units. Other modifications were also adopted.

In 2009, a court decision (commonly referred to as the Palmer decision) invalidated mandatory inclusionary affordable rental units due to conflicts with other state laws governing rent.

In April 2012, an affordable housing Nexus Study was completed for Sunnyvale which analyzed the nexus between new residential development and the demand for affordable housing created by the new development. On July 31, 2012, City Council introduced an ordinance to amend SMC Title 19 (Zoning Code) related to the BMR Programs and created SMC Chapters 19.67 and 19.69 (RTC No. 12-182). This amendment removed the requirement for new rental developments to dedicate affordable units. SMC Chapter 19.67 contains the provisions for the current BMR Ownership Program while SMC Chapter 19.69 provides the requirements to administer the BMR rental units required prior to the Palmer court decision in 2009.

In July 2015, City Council adopted two resolutions (RTC No. 15-0207) approving the creation of the two new Housing Impact Fees: The Housing Impact Fee for Nonresidential Development and the Housing Impact Fee for Rental Housing. Both fees adjust annually by the Consumer Price Index (CPI) or another factor per the City's Fee Schedule and Resolution.

The state legislature adopted a law in 2017 that enabled the establishment of local inclusionary rental requirements (referred to as the Palmer fix).

21-0631

Agenda Date: 6/14/2021

In 2017, City Council approved Study Issue CDD 17-09, the 2017 Housing Strategy (later renamed the 2020 Housing Strategy to reflect the year the study was completed), which was to provide a comprehensive look at the current Housing Programs along with recommendations for updates and potential new programs to meet the needs of the community. Prior to completion of the 2020 Housing Strategy, amendments to the rental BMR program (to re-establish the inclusionary BMR requirement for rental developments) were adopted in late September 2019 (RTC No. 19-0932). Similar to the prior requirement, 15% of the units were to be affordable to lower income households; however, the regulations were updated to specify that 5% need to be affordable to very low income households and 10% needed to be affordable to low income households. The 55-year term of affordability was also reinstated.

On October 13, 2020, Council approved the 2020 Housing Strategy and Implementation Schedule (RTC No. 20-0809), which included a Tier 1 recommendation to increase the ownership inclusionary percentage to 15% (Attachment 4).

The Housing and Human Services Commission reviewed this item on May 26, 2021 (Report No. 21-0071). Draft minutes are provided in Attachment 2. The Planning Commission is scheduled to consider this item on June 14, 2021 and the City Council is scheduled to consider this item on June 29, 2021.

## **EXISTING POLICY**

### **SUNNYVALE GENERAL PLAN**

#### **Housing Element**

**GOAL HE-1 ADEQUATE HOUSING** - Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale's households of all income levels.

**Policy HE-1.3** 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.

**Policy HE-1.4** Continue to require office and industrial development to mitigate the demand for affordable housing.

#### **Land Use and Transportation Element**

**GOAL LT-7 DIVERSE HOUSING OPPORTUNITIES** - Ensure the availability of ownership and rental housing options with a variety of dwelling types, sizes, and densities that contribute positively to the surrounding area and the health of the community.

## **ENVIRONMENTAL REVIEW**

This action is exempt from review under the California Environmental Quality Act (CEQA) because the Ordinance has no potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment pursuant to CEQA Guidelines Sections §15378 and 15061(b)(3). The Ordinance also is exempt because it is not intended to apply to specifically identified housing projects and, as such, it is speculative to evaluate any such future project now and, moreover, such projects will be subject to appropriate environmental review at such time as approvals for such projects are considered and/or the Ordinance is not intended to, nor does

**21-0631**

**Agenda Date:** 6/14/2021

it, provide CEQA clearance for any future development-related projects. Each of the foregoing provides a separate and independent basis for CEQA compliance and, when viewed collectively, provides an overall basis for CEQA compliance.

## **DISCUSSION**

Since the creation of the City's Inclusionary Housing programs, over 570 BMR ownership units have been developed and sold to income eligible households, while over 710 BMR rental units have been established through the rental program and the state Density Bonus Law program. This number of affordable units does not include developments built by non-profit affordable housing developers.

Home ownership continues to be a dream for many households in Sunnyvale. Market rate sales prices continue to increase at rapid rates throughout Sunnyvale and Santa Clara County, making it extremely challenging to purchase a market rate home for low to moderate income households who make between 81-120 percent of the Area Median Income (AMI).

Median sales prices for both single-family and condominiums more than doubled between 2009 and 2018 and they continue to rise. Per the Housing Strategy, the December 2018 median price for a single-family home was \$1.8M, and \$1.2M for a condominium. For calendar year 2020 the median price for a single-family home in Sunnyvale was \$1.9M and for a condominium was \$1.2M. As comparison, BMR units (two to four bedrooms) are priced between \$410,000 and \$520,000.

## **Current BMR Program**

Over time, the BMR Ownership Program has evolved, and changes have been made to ensure that the City continues to meet the priorities set by City Council for the housing needs of the community. The current BMR ownership requirement is for any for-sale residential development of eight or more units, 12.5% of those new units must be sold to low to moderate income buyers as outlined by the City's BMR Program. Alternative compliance and in-lieu fee options are available, if approved by the City Council. The BMR units must be sold at a price determined by the City, based on the AMI established by the California Department of Housing and Community Development (HCD). All inclusionary ownership units are priced at moderate income, and count towards the moderate income category of the City's Regional Housing Needs Allocation.

The goal of the BMR Ownership Program is to provide affordable home ownership opportunities to moderate and lower-income, first-time home buyer households. The Program provides priority to purchase available BMR homes to eligible households who currently live or work in Sunnyvale. Requirements to purchase a BMR home are outlined in the City's BMR Program Guidelines. All application review, qualification approvals, and restrictive document preparation is done in-house by Housing Division staff.

## **Proposed Ordinance Amendments**

As mentioned above, a Tier 1 recommendation of the 2020 Housing Strategy is to increase the ownership inclusionary percentage from 12.5% to 15%. In 2015, the California Supreme Court held in *California Building Industry Assn. v. City of San Jose* that San Jose's 15% inclusionary ownership ordinance was a valid exercise of the City's police powers and land use authority. Accordingly, this proposed amendment would increase the supply of BMR ownership units over time and would still be within the acceptable parameters of neighboring jurisdictions and current caselaw.

To identify best practices and to ensure that any recommendations presented to City Council were

21-0631

Agenda Date: 6/14/2021

comparable to neighboring cities, staff researched local requirements for many nearby cities in the Bay Area. The results of that research can be found in Attachment 5 and summarized below.

- Many local cities have an inclusionary requirement ranging from 10% to 22.5%, based on certain criteria such as on-site versus off-site, or the number of units being developed.
  - A 15% requirement keeps Sunnyvale in line with most cities surveyed.
- The minimal threshold for applicability of an ordinance ranges from 2 units to 19 units.
- The in-lieu fee charged as an alternative compliance option ranges from \$13/sq. ft. to \$129/sq. ft (applies to certain parameters), one city charged a flat fee of \$158,000 per unit.
  - Sunnyvale charges a fee of 7% of the final sales price of each market rate unit.
- Many cities offer a variety of alternative compliance options, similar to Sunnyvale.

Based on outreach and research the following amendments to the City's Inclusionary BMR Ownership Program Ordinance are included in the proposed Draft Ordinance (Attachment 3).

- Program applicable to new for-sale residential developments with seven (7) or more units.
- Applies to any applicable housing project with an application that is deemed complete by the effective date of the ordinance (*estimated* as August 14, 2021).
- At least fifteen percent (15%) of the total number of for-sale units in a development shall be developed as affordable ownership units affordable to moderate income households, unless the City Council approves an Alternative Compliance Plan as already outlined in the Zoning Code.
- Fractional Units can continue to be rounded up, or satisfied with an in-lieu fee (which does not require City Council approval).
- Alternative Compliance Options have been aligned with current Inclusionary BMR Rental Program.
- No changes to in-lieu fees or fractional fees are proposed as the City's current in-lieu fee rate is consistent with surrounding jurisdictions, and the collection timing can be seen as favorable to developers and does not hinder new development.

## PUBLIC OUTREACH EFFORTS

During the Housing Strategy creation, over ten outreach meetings were held in 2019 with hundreds participating in ranking strategies and providing feedback. The Strategy to increase the ownership inclusionary percentage ranked consistently as a top priority and was selected as a Tier 1 Strategy in the City Council adopted Housing Strategy. Staff held a Stakeholder Meeting on March 23, 2021. Over 90 developers and affordable housing advocates were invited and two representatives attended the meeting: one participant was from a housing advocacy group and one represented the developer community. Summarized comments from the stakeholder meeting are as follows, and found in Attachment 6.

- Extra units are always needed and 15% seems reasonable.
- More flexibility but could be counter to the objective of the Ordinance.
- Value in looking at a compliance option that allows a developer to build rental units offsite rather than for sale units within the development.
- Use normal rounding rather than requiring the payment of a fractional in-lieu fee or rounding up a whole unit.
- Current BMR sales price, compared to the market rate sales price, is a big gap that private developers are expected to step into and absorb. Consider this when looking at making

21-0631

Agenda Date: 6/14/2021

changes to increase BMR requirements.

- 15% requirement at moderate income is fine.
- Look at incentives, like reduced fees for developers who provide affordable units.

### **FISCAL IMPACT**

The Affordable Housing program is funded by a small percentage of Housing Mitigation fees. The increase in staff time to administer this adjustment in BMR units can be covered with available funding.

### **PUBLIC CONTACT**

Notice of Public Hearing

- Published in the *Sun* newspaper.

Staff Report

- Posted on the City's website

Agenda

- Posted on the City's official notice bulletin board
- Posted on the City's website

### **ALTERNATIVES**

Recommend that the City Council:

1. Introduce an ordinance to amend Chapter 19.67 ("Below Market Rate Ownership Housing ") of Title 19 ("Zoning") of the Sunnyvale Municipal Code to modify Inclusionary Below Market Rate Ownership Housing Requirements (Attachment 3 to the report).
2. Introduce an ordinance to amend Chapter 19.67 ("Below Market Rate Ownership Housing ") of Title 19 ("Zoning") of the Sunnyvale Municipal Code to modify Inclusionary Below Market Rate Ownership Housing Requirements (Attachment 3 to the report), with modifications.
3. Do not introduce an ordinance and provide direction to staff if modifications are desired.

### **RECOMMENDATION**

Alternative 1: Recommend that the City Council Introduce an ordinance to amend Chapter 19.67 ("Below Market Rate Ownership Housing") of Title 19 ("Zoning") of the Sunnyvale Municipal Code to modify Inclusionary Below Market Rate Ownership Housing Requirements (Attachment 3 to the report).

Alternative 1 meets the City's goal of increasing affordable housing production through an inclusionary housing program for both low and moderate income households; this code amendment focuses on increasing affordable housing for moderate income households, bringing it up to the required inclusionary percentage of rental units (affordable to low income households). Community members attending various outreach meetings voiced support to the City increasing ownership inclusionary housing at a rate of fifteen percent.

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**21-0631**

**Agenda Date:** 6/14/2021

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Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. *Reserved for Report to Council*
2. Excerpt of Draft Minutes of the Housing and Human Services Commission Meeting of May 26, 2021
3. Draft Ordinance, Amended Chapter 19.67: Inclusionary Below Market Rate Ownership Housing
4. 2020 Housing Strategy
5. Survey of Local Jurisdictions' Inclusionary Requirements
6. Stakeholder Meeting Minutes of March 23, 2021