

ORDINANCE NO. 3178-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE TO AMEND CHAPTER 19.67 (BELOW MARKET RATE OWNERSHIP HOUSING) OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO THE INCLUSIONARY BELOW MARKET RATE OWNERSHIP HOUSING PROGRAM

WHEREAS, the City of Sunnyvale desires to amend certain sections of the Sunnyvale Municipal Code Chapter 19.67 (Below Market Rate Ownership Housing) relating to the Inclusionary BMR Ownership Housing Program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 19.67 AMENDED. Chapter 19.67 (Below Market Rate Ownership Housing) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

Chapter 19.67. INCLUSIONARY BELOW MARKET RATE OWNERSHIP HOUSING PROGRAM

19.67.010. Purpose. [Text Unchanged]

19.67.020. Definitions.

When used in this chapter, these terms mean the following:

(a) – (f) [Text Unchanged; Renumbered]

(g) “Density bonus units” means ownership units approved in a residential development pursuant to California Government Code Section 65915 et seq., and Section 19.18.025 that are in excess of the maximum allowable residential density otherwise permitted by the City of Sunnyvale.

(h) [Text Unchanged; Renumbered]

(i) “Gross annual household income” means the gross, pre-tax income of all adult occupants of the applicant household, and as may be further defined in the BMR Home Ownership Program Guidelines.

(j) [Text Unchanged; Renumbered]

(k) “Lower income household” means a household whose income exceeds the

income for a very low income household but does not exceed the low income limits applicable to Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development (or its successor provision).

(l) [Text Unchanged; Renumbered]

(m) “Moderate income household” means a household whose income exceeds the income for a low income household but does not exceed one hundred twenty percent of the area median income applicable to Santa Clara County, as published and periodically updated by the State Department of Housing and Community Development (or its successor provision).

(n) – (o) [Text Unchanged, Renumbered]

19.67.030. Applicability.

(a) Projects with Seven or More Units. This chapter applies to any project that would create seven or more new ownership housing units or single-family lots. Projects not deemed complete before the enactment of this chapter are subject to the regulations in this chapter.

(b) [Text Unchanged]

(c) BMR Home Ownership Program Guidelines. The director of community development (director) shall develop detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter. These procedures and guidelines are incorporated into this chapter as the BMR Home Ownership Program Guidelines.

19.67.040. Exemptions.

(a) Ownership housing projects of fewer than seven units.

(b) Residential for-sale projects that have received planning approval and those with planning applications determined complete by the planning division by August 12, 2021.

(c) Affordable housing projects in which one hundred percent of the ownership units to be built will be subject to a recorded restriction limiting occupancy to very low income, low income, or moderate income households at affordable sales prices.

19.67.050. Below market rate ownership housing (BMR) requirement.

(a) Inclusionary Requirement. At least fifteen percent of the total number of ownership housing units or single-family lots in a project shall be developed as BMR ownership housing, unless the decision-making body allows the BMR ownership housing requirement to be satisfied through the alternatives under Section 19.67.090 (Alternatives to satisfy below market rate housing requirement).

(b) Fractional Units. In calculating the number of BMR units required, any fraction of a whole number shall be satisfied by either developing one additional BMR unit or by paying an in-lieu fee. For example, for a ten-unit project that is required to have one and one-half BMR units, the applicant may develop one BMR unit and pay a fee for the remaining one-half units required, or develop a total of two BMR units.

(c) Application. An applicant for a project consisting of seven or more ownership units must submit a BMR Compliance Plan concurrently with the application for the first approval of the project. If a BMR Compliance Plan is required, no application may be determined complete until a complete BMR Compliance Plan is submitted.

(d) Any BMR Compliance Plan shall be processed concurrently with all other permits required for the project. Before approving the BMR Compliance Plan, the decision-making body shall find that the BMR Compliance Plan conforms to this section. The approved BMR Compliance Plan may be amended before issuance of a building permit for the development project. A request for a minor modification of an approved BMR Compliance Plan may be granted by the director if the modification is substantially in compliance with the original BMR Compliance Plan and conditions of approval. Other modifications to the BMR Compliance Plan shall be processed in the same manner as the original plan.

19.67.060. Density bonus.

The city, upon request, shall approve an increase in the number of units permitted in a proposed residential development governed by the Chapter, when such an increase in density is consistent with State Density Bonus Law per Sections 65915 through 65918 of the California Government Code and Section 19.18.025 of the Sunnyvale Municipal Code. The dwelling units or parcels designated to meet the city's inclusionary housing requirement may count toward qualifying the proposed development for a density bonus if the residential development meets all of the applicable requirements to qualify for a density bonus under Government Code Section 65915 and Section 19.18.025 of the Sunnyvale Municipal Code.

19.67.070. Development standards.

BMR units are subject to the following development standards:

(a) Location. BMR units shall be distributed evenly throughout the project. The decision-making body may waive the location requirement if:

(1) – (2) [Text Unchanged]

(b) [Text Unchanged]

(c) Bedroom Count. Affordable units shall be a pro-rata share by plan type. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project. Deviations to this requirement may be approved by the director.

(d) – (f) [Text Unchanged]

(g) Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project. For example, for a project with a fifteen percent BMR ownership housing requirement, at least one BMR unit shall be constructed before or concurrently with every seventh market rate unit constructed. The last market rate unit to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The director may approve a modified schedule if the timing requirement will create unreasonable delays in the issuance of certificates of occupancy for market rate units.

19.67.080. Occupancy and sale restrictions.

(a) – (c) [Text Unchanged]

(d) Maximum Sales Price. The director shall establish and publish annually the maximum sale prices for each BMR unit size in the BMR Home Ownership Program Guidelines. The maximum BMR unit sale prices shall not exceed a price affordable to median income households, based on a housing cost of up to thirty percent of monthly gross household income for the unit's assumed household size. The percentage of AMI used to establish maximum sale prices shall be one hundred percent, except that the director may adjust the percentage within a range of eighty-one to one hundred ten percent of AMI to address major shifts in the housing market or other related economic conditions affecting the demand for BMR housing.

(e) Sale Requirements. The following requirements shall be met in any sale and resale of a BMR unit during the term of restrictions:

(1) [Text Unchanged]

(2) The eligible buyer shall execute and record a new declaration of restrictions which incorporates all current occupancy and sale restrictions in this chapter and in the BMR Home Ownership Program Guidelines; and

(3) – (4) [Text Unchanged; Renumbered]

(f) Eligible Buyers. The director shall determine the eligibility of prospective buyers of BMR units. It is unlawful for any person to willfully make a false representation or fail to disclose information for the purpose of qualifying as eligible to purchase a BMR unit. Prospective buyers must meet the following requirements:

(1) Income Limits. The prospective buyer's combined household income and assets shall not exceed the limits for a moderate income household, as further defined in the BMR Home Ownership Program Guidelines;

(2) Priority to Purchase. Applicants who reside or are employed within Sunnyvale city limits at the time of application shall be considered a priority one buyer to purchase

the BMR units;

(3) [Text Unchanged]

(4) Additional Criteria. The director may establish other reasonable eligibility criteria, ownership and occupancy requirements in the BMR Home Ownership Program Guidelines to ensure the buyer's ability to close escrow, maintain ownership of the unit, and to ensure effective operation of the program and equitable access to the units among eligible buyers.

(g) Occupancy and Rental Restrictions. BMR units shall be occupied as the primary residence of the eligible buyer for the duration of their ownership of the unit and shall not be rented to other occupants at any time, except that:

(1) [Text Unchanged]

(2) The director may allow the temporary rental of a BMR unit for a predetermined period of time, subject to the rental and occupancy requirements in Chapter 19.77 (Inclusionary Below Market Rate Rental Housing), upon a finding of hardship beyond the control of the owner.

(h) Refinancing. BMR home owners shall not refinance a BMR unit without prior written approval of the director. BMR units shall not be used as collateral to secure additional liens and debts. Refinancing procedures are available in the Guidelines and may be amended from time to time.

19.67.090. Below market rate (BMR) housing developer agreement.

(a) Required Before Final Map or Building Permit. Before final recordation of a subdivision map or issuance of any building permits for the project, whichever occurs first, the property owner shall execute and record a BMR housing developer agreement ("Agreement") with the city.

(b) Agreement Provisions. The Agreement shall include, at a minimum, the following provisions:

(1) Binding of Persons. A provision that binds the heirs, assigns, and successors in interest of the property owner to the Agreement;

(2) – (6) [Text Unchanged]

(7) Amendments. Major amendments to the Agreement, including any proposal to change any approved alternatives shall be reviewed by the decision-making body. Minor amendments to the Agreement may be reviewed by the director. Upon approval, a new Agreement containing the amendments shall be executed and recorded.

19.67.100. Alternatives to satisfy below market rate (BMR) housing requirement.

(a) City Council Approval. The applicant may satisfy the affordable ownership housing requirement of a project using one or more of the alternatives in this section, subject to recommendation by the housing and human services commission and final approval by the city council. The applicant shall identify the required affordable housing units in the BMR Compliance Plan submitted with the project application materials regardless of a request to use an alternative to meet the affordable ownership housing requirement. An BMR Compliance Plan requesting an alternative compliance option (Alternative Compliance Plan) may only be considered once a project has received all other planning entitlements.

(b) Payment of In-Lieu Fee. The applicant may pay an in-lieu fee, as follows:

(1) Amount of In-Lieu Fee. The amount of the in-lieu fee shall be equal to seven percent of the contract sales price of all units in the project. If the applicant is paying an in-lieu fee for a fractional unit only, the minimum fee rate may be adjusted proportionally.

(2) Fee Payment. A Demand for Payment shall be placed on each ownership housing unit in order to collect payment of the in-lieu fee before close of escrow, as required in the Agreement.

(c) Partnership. The applicant may satisfy the inclusionary requirement through a partnership with another developer providing affordable housing units in another project, if the following requirements are met:

(1) Proof of Partnership. Legal agreements between the applicant and the partner show that the applicant is providing reasonable funding, land, development services, or other support to the affordable housing units;

(2) Financial Contributions. The applicant's financial contributions to the partnership shall be at least equal to the amount of the in-lieu fee that would otherwise be due from the project and shall be held in trust by the city until needed by the partner to develop the affordable housing units. The proposed project with the Partner shall not have received other city financial contributions (such as land lease, housing mitigation fund or low/mod impact fund loan) unless additional affordable units are being proposed;

(3) Site Acquired. The applicant or the partner has control of or the right to build on the site where the affordable housing units will be developed;

(4) Affordable Housing Development Application. The affordable housing development application has been approved or at least determined complete at the time the project required to provide affordable housing is approved;

(5) Funding Acquired. The partner has obtained legal commitments for all necessary financing, or the city has approved the financing plan for the affordable housing development;

(6) Construction in Two Years. The affordable housing units can be constructed and occupied within two years of completion of the applicant's project, unless the director approves an extension not to exceed an additional two years to obtain any federal tax credit financing. If the development is not completed within this time period, the city may transfer the applicant's financial contributions to the below market rate housing mitigation fund; and

(7) Average Number of Bedrooms Per Unit. The average number of bedrooms per unit of the affordable housing units in the other project is comparable to the average number of bedrooms per unit in the project required to provide affordable ownership housing. This requirement may be modified with director approval if the affordable housing units in the other project is designed to serve those with special housing needs which would not require an equivalent number of bedrooms per unit.

(d) Unit Conversion or Preservation Program. The applicant may convert an existing market rate ownership or rental unit into deed-restricted affordable housing or preserve an expiring affordable housing development in compliance with the following terms:

(1) Affordability. Ownership units shall be made affordable to moderate income households, and rental units shall be made affordable to low and very low income households;

(2) For every required affordable unit, at least three units shall be converted or preserved, as approved by the decision-making body. Approval shall be based on a finding that the benefit of the number of affordable units preserved has a greater benefit than providing the units within the original project;

(3) Declaration of Restrictions. Dwellings converted into affordable housing shall be secured by recording a declaration of restrictions to bind the units to the requirements of Section 19.77.070 or 19.67.090;

(4) Timing of Completion. Dwellings shall be converted or rehabilitated and available for occupancy before or at the same time the project required to provide affordable housing is available for occupancy, unless a modified schedule is approved by the director;

(5) Displacement. The conversion or preservation shall not displace any tenants, regardless of income level, through the following measures:

(i) First Right of Return. The developer of a new development or rehabilitation project that would displace existing tenants shall provide each tenant the following rights:

(A) The ability to return to a unit at the same level of affordability (measured in monthly rent) as the prior unit.

(B) The ability to return to a unit of comparable size with the

same or greater number of bedrooms.

(ii) Relocation Plan. Prior to project approval, conversion or preservation projects that would add, demolish, and/or rehabilitate rental units shall prepare, subject to approval by the director, a relocation plan that accounts for all tenants displaced by new construction or rehabilitation. The relocation plan shall ensure tenants are provided housing from the moment they are displaced until they are relocated into a replacement unit. The relocation plan must meet the following criteria:

(A) Provide temporary housing within Sunnyvale or within 10 miles of the prior home.

(B) Must not pay more in rent than paying in the prior home.

(C) All costs of relocation must be paid for by the project sponsor.

(D) Moving process between units must occur quickly and efficiently and to minimize the inconvenience of the tenant.

(E) Replacement housing must be completed within one and one-half years to minimize impacts to tenants.

(6) If applicable, all requirements of the City's Condominium Conversion ordinance shall be enforced.

(e) Land Dedication. Dedicate a parcel of land large enough to accommodate the project's inclusionary requirement plus thirty-five percent additional units. Any rezone or land use change required by the city needed to construct residential units shall be completed prior to issuance of building permit of market rate units.

(f) Other methods of mitigating affordable housing may be approved at the sole discretion of city council.

19.67.110. Default, foreclosure, and loss of unit.

(a) Option to Purchase. If a notice of default is recorded on a BMR unit and the homeowner fails to correct it, an eligible buyer, or the director on behalf of the city, may purchase the unit. The unit shall be purchased at a sale price equal to the amount the owner would have received on the date of the foreclosure sale under the BMR Home Ownership Program Guidelines. The eligible buyer may purchase the unit by paying any amounts due to lien holders and paying to the owner any balance of funds remaining after payment of the costs of sale and any repairs chargeable to the homeowner. All other resale provisions of the Guidelines apply.

(b) [Text Unchanged]

(c) Distribution of Proceeds. This subsection applies to any BMR unit lost by sale at a trustee's sale or foreclosure, destruction, condemnation, or by liquidation of the homeowners association. If a BMR unit is restored, the remaining term of occupancy and sale restrictions shall continue upon completion. Any proceeds remaining after payment of encumbrances on the unit shall be distributed as follows:

(1) Homeowner. To the homeowner, up to the net amount the homeowner would have received under the sale price in the BMR Home Ownership Program Guidelines if the city had purchased the unit on the date of the loss; and

(2) [Text Unchanged]

19.67.120. Below market rate (BMR) housing trust fund.

This section establishes the BMR housing trust fund for the deposit of all monies collected under this chapter. Trust funds shall be used for developing or preserving affordable housing in the city, administering the BMR program, and supporting income qualified households obtain housing.

19.67.130. Enforcement.

In addition to the provisions in Chapter 19.98.140 (Violations), the following provisions also apply to the enforcement of this chapter:

(a) [Text Unchanged]

(b) Misdemeanor Violation. Any violation of this chapter by a person, firm, or corporation, whether as principal or agent may be prosecuted as a misdemeanor. Each offense may be punishable by a fine in the amount established in the city fee schedule or Chapter 1.04, or by imprisonment in the Santa Clara County jail for a term up to six months, or both. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is commenced, continued, or permitted by such person, firm, or corporation, and may be punishable as provided in this section.

(c) Civil Action. Any buyer of a BMR unit for a sale price in excess of that allowed by this chapter, or any tenant who rented a BMR unit for rents in excess of those allowed by Chapter 19.77 (Inclusionary Below Market Rate Rental Housing Requirements), and who has given written notice to the director, may file a civil action to recover the excess costs, whether rental of such BMR unit was prohibited by this chapter or expressly permitted in writing by the director as an exception or alternative to the standard BMR requirement. The buyer or tenant shall have met the income eligibility requirements of this chapter or Chapter 19.77, as applicable, during the period of time for which the individual seeks reimbursement of the excess costs.

(d) Fines. If it is determined that the current BMR owner has violated the terms of this Chapter, or if unauthorized or excess rents have been charged to a tenant or subtenant of a BMR unit of any kind subject to the restrictions of this chapter, the property owner shall be required to

forfeit all excess monetary amounts so obtained in violation of this Chapter. Such amounts shall be added to the city's housing fund.

(e) Legal Action. The city may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages. If successful, the City shall be entitled to request recovery of its reasonable attorney fees and other legal costs.

19.67.140. Appeals. [Text Unchanged]

19.67.150. Severability. [Text Unchanged]

SECTION 2. CEQA - EXEMPTION. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 3. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 5. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:
RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney