



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

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

#### **BACKGROUND**

In 2016, the City Council approved two new residential developments, both proposed by De Anza Properties (Applicant):

- **Pastoria Corners**, a mixed-use project of 49 dwelling units with vesting tentative map and commercial/hotel uses (File 2015-7756) was approved by the Planning Commission on April 25, 2016 and upheld on appeal by Council on June 21, 2016 (RTC No. 16-0557); and
- **Butcher's Corner**, a residential project of 138 dwelling units with a vesting tentative map (File 2014-7373), was approved by Council on December 13, 2016 (RTC No. 16-1132).

Both developments are required to comply the Below Market Rate Housing requirements (BMR Program), codified in Sunnyvale Municipal Code (SMC) Chapter 19.67 (Chapter 19.67). Chapter 19.67 requires that residential projects of 8 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. Both projects are mapped to allow all of the units to be offered for-sale; a portion of both projects include units that will be for-sale at the inception of the development and a portion that will be rental at inception. The Applicant may apply for Council approval of an alternative compliance option, as defined in SMC Section 19.67.090, to satisfy the BMR requirements. After these projects were approved in 2016, the Applicant filed applications for each project (File 2016-7568 for Pastoria Corners and File 2016-7569 for Butcher's Corner) requesting Council approval to pay 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.

#### **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, town homes, or condominiums). The standard requirement is for 12.5% of the ownership units in such projects to be provided as BMR homes. This equals 6.125 units for Pastoria Corners and 17.25 units for Butcher’s Corner. Fractional units may be rounded up or a pro-rated ILF may be paid. Chapter 19.67 allows developers to seek Council approval of one of several alternative compliance options, such as an ILF payment. Each of the Applicant’s developments includes two distinct components: a for-sale component of town homes, duets or single-family homes (TH/SFD) intended for sale immediately; and a larger multi-family component, referred to as flats, apartments, or rental units in the project descriptions. The number of units in each component of each project is shown in the table below.

The Applicant intends to retain ownership of the flats in each project and operate them as rental apartments. However, a vesting tentative map was filed and approved for each project, which allows a Condominium Plan to be filed with the California Bureau of Real Estate to create air space condominiums; the future condominium units are also subject to the BMR requirements. Those requirements take full effect if the Applicant ever files a condominium plan and obtains State approval to sell the flats individually. Staff handles projects with “condo-mapped” rental units by including provisions in the BMR developer agreement that defers compliance with the BMR requirements on such units until the property owner begins to sell them. The BMR unit requirement attributable to each component of each project is shown below:

| <b>ILF Requirement per Project</b> |        |       |             |                                     |           |           |
|------------------------------------|--------|-------|-------------|-------------------------------------|-----------|-----------|
|                                    | TH/SFD | Flats | Total Units | <b>BMR Un<br/>Req'd<br/>(12.5%)</b> | TH/SFD Sh | Flats Sha |
| Pastoria                           | 9      | 40    | 49          | <b>6.125</b>                        | 1.125     | 5.00      |
| Butcher's                          | 39     | 99    | 138         | <b>17.250</b>                       | 4.875     | 12.37     |

As noted above, SMC Section 19.67.090 (a) allows developers to seek Council approval of an ILF payment as an alternative to providing BMR units within the project. The ILF rate is set at 7% of the contract sales price of each market-rate home in the project. Payment of this fee for each home in each project component fully satisfies the BMR requirement for that component. The Applicant is requesting Council approval now of the alternative to pay ILF for all units in each project, although the fee payment for the flats would be deferred until those units are offered for sale.

## **Estimated Fee Amount**

Staff estimated the potential ILF revenues from each project based on a market study of potential home prices in each project, provided by the Applicant. These studies only provide estimated home prices for the initial for-sale component of each project. A summary of the price ranges and estimated

ILF generated is provided in Attachment 1. At Pastoria Corners, the estimated prices for the duet homes range from \$1.8 to \$2.4 million, and the sole single-family home ranges from \$2.9 to \$3.3 million. At Butcher's Corner, the estimated sales prices for the 39 townhomes range from approximately \$1.6 to \$2.8 million, with minor variations in estimated values by plan type of the units.

In total, staff estimates the 9 homes at Pastoria Corners would generate an ILF in the range of \$1.2 to \$1.6 million, or close to \$1.4 million at the mid-point. The 39 townhomes at Butcher's Corner are estimated to generate an ILF of \$4.9 to \$5.3 million, or approximately \$5.1 million at the mid-point, as shown on Attachment 1. The actual ILF paid could be significantly higher or lower than these estimates if local home values increase or decrease significantly by the time these homes are sold.

It is difficult to estimate the future ILF that might be generated by the flats in each project, as it is unknown how many years may pass before the units are offered for sale, what the condition the units might be in, and what condominium prices might be at that time. In any case, no compliance can be required, beyond recordation of the BMR agreement, until those units are offered for sale. Council could approve or deny the Applicant's request to use the ILF option for these units now, or defer the decision until the sales process is initiated for those units. Because the property owner would need to file a condominium plan before selling the flats, staff would have time to set up the process for collecting the ILF or handling the sale of the required BMR units.

### **Rental Impact Fees**

Neither of these projects are subject to the City's Rental Impact Fee (RIF), adopted in late 2015, because their Planning applications were deemed complete before it was adopted. As a "pipeline project" these projects are exempt from the RIF.

### **Process for Collecting the ILF**

The requirement to pay the ILF is enforced by recording the BMR developer agreement against each property, creating a lien against title until the BMR requirements are satisfied in full. With the ILF option, staff also places a payment demand into escrow for the sale of each home to collect the ILF. Before closing each escrow, the escrow officer will send a check to the City for the ILF due from the sales proceeds of the 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 that phase of the project are sold.

With the De Anza projects, the BMR agreement would be left in place after the initial sales phase concludes, with the sold homes released and only the flats remaining subject to the lien. When the flats are offered for sale, staff would submit ILF payment demands into escrow for those as well. Staff would release the entire BMR agreement from each property after the ILF has been paid for all units. Alternatively, the property owner can always opt to sell some of the flats as BMR units rather than pay the applicable ILF, provided they pass City inspection and meet BMR standards. The Director of Community Development is authorized to approve that option.

### **Policy Considerations Related to Use of ILF**

Most ownership projects in Sunnyvale provide on-site BMR units, even in single-family developments, and pay ILF only for fractional units. This Applicant is the first to apply for Council approval of any alternative compliance option since those options were created through amendments to the SMC adopted in 2012. One of those options is payment of an ILF. Other options include providing BMR homes at another location nearby and/or a providing different type or size BMR units

than the market-rate units in the project. 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 income households for example.

These alternatives are most preferable when a project consists of luxury, very large, and/or very expensive homes. Often such projects are smaller projects that would not provide many BMR homes anyway. In such cases, more units of affordable housing could be provided to assist more households through one of the alternatives, 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 BMR 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 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 how many eligible buyers would like to buy them. Such units attract the attention of prospective buyers from far beyond the City limits, generating many inquiries. Staff usually arranges a lottery, which is much more time- and staff-intensive than the usual BMR sales process. Lotteries can also create stress and anxiety for the applicants, particularly those who are not able to buy one of the homes, after their families have gotten so excited about the process. In addition, the provision of expensive luxury homes at BMR prices, which can sometimes be less than 25% of the market-rate price, sometimes creates resentment of the BMR program among neighbors or other City residents, due to perceptions of unfairness.

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 Council approves the Applicant's request to pay ILF for both projects, staff estimates that it would result in total revenues of approximately \$6.5 million for the BMR sub-fund of the Housing Special Revenue Fund (70-200) upon completion of the first phase of each project. The estimated fees for the future phase of each project is more speculative due to the uncertainty of when those units might be first offered for sale, however staff has provided a rough estimate below showing what the revenues would be if those units were sold at today's estimated sales prices.

| Project          | Initial<br>For-Sale Units<br>(TH/SFDs) | Future<br>For-Sale Units <sup>1</sup><br>(Flats) | Total               |
|------------------|--|--|---------------------|
| Pastoria Corners | \$1,400,000                            | \$2,800,000                                      | \$4,200,000         |
| Butcher's Corner | \$5,100,000                            | \$9,000,000                                      | \$14,100,000        |
| <b>Total</b>     | <b>\$6,500,000</b>                     | <b>\$11,800,000</b>                              | <b>\$18,300,000</b> |

1. These fee revenues were calculated using estimated condominium prices based on September 2017 market conditions (\$1 million per flat at Pastoria Corners and \$1.3 per flat at Butcher's Corner).

This Fund can be used to assist various affordable housing projects approved by Council, with an emphasis on creating new affordable units for rent or sale. The funds can also be used to fund rehabilitation projects, such as the loan approved recently for the Stoney Pine Villa project. BMR ILF funds are also used to provide First Time Home Buyer loans, and a portion of the funding required for BMR Program administration. Staff periodically solicits proposals for new affordable housing capital projects to be funded using BMR and/or other available Housing funds. BMR in-lieu fees may not be used for non-Housing purposes or deposited into other City funds, such as the General Fund.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Pastoria Corners: Approve the Applicant's BMR Alternative Compliance Plan project located at 803 W. El Camino Real, as shown in Attachment 2.
2. Pastoria Corners: Approve the Applicant's BMR Alternative Compliance Plan for project located at 803 W. El Camino Real, with modifications.
3. Butcher's Corner: Approve the Applicant's BMR Alternative Compliance Plan for project located at 871 E. Fremont Avenue, as shown in Attachment 3.
4. Butcher's Corner: Approve the Applicant's BMR Alternative Compliance Plan for project located at 871 E. Fremont Avenue, with modifications.
5. Do not approve the BMR Alternative Compliance Plan for either or both project(s) and require the Applicant to comply with the BMR conditions of approval by providing BMR units within the project, or other alternative specified by Council.

### **STAFF RECOMMENDATION**

Alternatives 1 and 3: 1) Approve the Applicant's Below Market Rate Alternative Compliance Plan for Pastoria Corners, located at 803 W. El Camino Real, as shown in Attachment 2 to the report; and 3) Approve the Applicant's Below Market Rate Alternative Compliance Plan for Butcher's Corner, located at 871 E. Fremont Avenue, as shown in Attachment 3 to the report.

Staff recommends approving the ILF option for these projects, allowing the City to use the fees to finance one or more larger affordable housing projects with a much higher number of affordable units, most likely at a deeper level of affordability, than would be provided within these projects. Such units are in very high demand and can make the difference between homelessness and stable housing for many lower-income families. From a public policy perspective, this approach can be preferable to

providing very few, most likely moderate-income households, with very expensive luxury homes at price discounts of \$1 million or more.

If the City Council prefers, the ILF option for the for-sale component could be approved but not the rental component, or vice-versa, for either project. Staff considers the ILF option more appropriate for the for-sale component than for the rental component, since the flats are more modest units, and there would be more BMR homes within that component of each project. Such a proposal could fit within Alternative 2 or 4, depending on which project it pertains to, with appropriate detail in a motion.

Prepared by: Ernie Defrenchi, Affordable Housing Manager

Reviewed by: Suzanne Isé, Housing Officer

Reviewed by: Trudi Ryan, Director, Community Development

Approved by: Kent Steffens, Interim City Manager

### **ATTACHMENTS**

1. Estimated In-Lieu Fees
2. Pastoria Corners Alternative Compliance Plan
3. Butcher's Corner Alternative Compliance Plan