



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 19-0932, Version: 1

REPORT TO COUNCIL

SUBJECT

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.

SUMMARY OF COMMISSION ACTION

The Housing and Human Services Commission (HHSC) considered this item on August 28, 2019 (Report to Commission No. 19-0690). The Planning Commission considered this item on September 9, 2019, (Report to Commission No. 19-0931, Attachment 1 to this report). The two commission reports were the same report except the Planning Commission report contains an additional Alternative to reflect the Housing and Human Services Commission recommendation.

The HHSC voted to recommend the ordinance as presented and recommended an in-lieu fee of \$15.00/\$30.00 per square foot for small/large developments, that is further scaled to incentivize the production of three and four-bedroom units. This recommendation is Alternative 7 of this report. Minutes of the HHSC meeting are found in Attachment 5.

The Planning Commission voted to recommend the ordinance with a modification:

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

The Planning Commission also recommended that the City Council explore the possibility of grandfathering in the pending projects within the Downtown Specific Plan Area due to the length of time they have been in process. The Planning Commission further recommended the in-lieu fee of \$12.50/\$25.00 per square foot for small/large developments. The Planning Commission recommendation is Alternative 8 of this report. Minutes of the Planning Commission meeting are found in Attachment 6.

Public Comment letters are provided in Attachment 7 to the report.

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

Below Market Rate Rental Housing Ordinance

1. 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 (Attachment 3 to the report).
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 modifications.
3. Do not introduce an ordinance and provide direction to staff if modifications are desired.

In-Lieu Fee for Below Market Rate Rental Units

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).
5. Approve a Resolution to amend the Master Fee Schedule at a different amount than in Alternative 4.
6. Do not create a Rental Housing In-Lieu Fee.

Commission Recommendations

7. **Housing and Human Services Commission Recommendation:** 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 (Attachment 3 to the report); and approve a Resolution to amend the Master Fee Schedule and create a new Small Rental Project In-Lieu Fee of \$15.00 per habitable square foot and a new Large Rental Project In-Lieu Fee of \$30.00 per habitable square foot, adjusted annually as part of the City Fee Schedule, and develop a reduced fee for three and four bedroom units to incentivize the provision of units with more bedrooms.
8. **Planning Commission Recommendation:** 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, and grandfather in the pending projects within the Downtown Specific Plan due to the length of time they have been in process; and, 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).

STAFF RECOMMENDATION

Alternatives 1 and 4: 1.) 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 (Attachment 3 to the report); and 2.) 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).

Alternative 1 meets the City goal of increasing affordable rental housing production through an

inclusionary housing program for both low and very low income households. Community members attending various outreach meetings voiced support to the City reinstituting rental inclusionary housing at a rate of fifteen percent. In addition, staff recommends Alternative 4 as this option is within the square footage Nexus Study Fee Range and falls within the range of our neighboring jurisdictions. This In-Lieu Fee rate would cover roughly 25 percent of the typical per unit construction costs seen by our non-profit development partners as they develop affordable housing.

As discussed above, Council will have the ability to consider policy or program modifications recommended through the Housing Strategy to modify or improve the inclusionary rental or ownership programs, when the final report is considered in early 2020.

Staff is not recommending the Housing and Human Services Commission suggestion to have a scaled fee for larger sized units. The ordinance focuses on providing units and the in-lieu fee would only be paid if approved by the Council due to an exceptional circumstance. Generally, units with more bedrooms make up a very small portion of proposed and constructed rental developments (even without the inclusionary requirement). If the Council finds that the reduced fee is desirable, staff suggests that the 3-bedroom fee would be 95% of the adopted fee and 4-bedroom units would be 90% of the adopted fee. Council could also direct staff to further study this concept, as a future action.

Staff is not recommending the Planning Commission's suggestion to include a "right to sue" process in Section 19.77.120(c) of the ordinance. Tenant protection ordinances typically include a provision that creates privately enforceable legal rights. This is an important mechanism for non-profit legal aid organizations and/or individual tenants to seek the assistance of the courts to remedy violations of the ordinance. Staff does not believe that the private right of action will be abused because as written, Section 19.77.120(c) only authorizes the tenant to use the private right of action to recover excess rent, not fines, penalties or attorney's fees.

However, if the Council finds that this issue should be addressed in the Inclusionary Below Market Rate Rental Housing ordinance, the following language could be considered to be added to Section 19.77.120(c): *"Any tenant who rented an affordable rental unit for rents in excess of those allowed by this Chapter, and who has given written notice to the Community Development Director and received a right to sue letter from the Director, may file a civil action..."*

In addition, staff does not believe it is necessary to grandfather the CityLine Project because the City and the Developer are currently in the process of negotiating a Development Agreement that will address the level of affordable housing in the context of other community benefits. If the Council wishes to address this issue in the ordinance; however, then Section 19.77.030 (Applicability) could be modified to include a longer grace period or different effective date for residential projects. As currently proposed, the draft ordinance applies to projects that do not have a completed planning application as of the effective date of the ordinance of November 8, 2019. The CityLine Project does not have a completed application at this time.

Prepared by: Jenny Carloni, Housing Officer
Reviewed by: Trudi Ryan, Director, Community Development
Reviewed by: Teri Silva, Assistant City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Report to the Planning Commission, 19-0931 on September 9, 2019 (without attachments)
2. Housing Strategy Community Workshop - Inclusionary Comments Summarized
3. Draft Inclusionary Below Market Rate Rental Housing Ordinance
4. Draft Rental Housing In-Lieu Fee Resolution

Additional Attachment for Planning Commission Report

5. Excerpt of Draft Minutes of the Housing and Human Services Commission Meeting of August 28, 2019

Additional Attachments for Report to Council

6. Excerpt of Draft Minutes of the Planning Commission Meeting of September 9, 2019
7. Planning Commission Public Comment Letters