



DATE: February 13, 2018

CATEGORY: Public Hearing

DEPT.: Community Development

TITLE: **Modifications to the BMR Affordable Housing Program**

RECOMMENDATION

1. Introduce an Ordinance Amending the Below-Market-Rate Housing Program, Mountain View City Code Sections 36.40.10 through 36.40.25 (Attachment 1 to the Council report), and set a second reading for February 27, 2018.
2. Adopt a Resolution Amending the Below-Market-Rate Housing Program Administrative Guidelines Associated with the Ordinance Amending the Below-Market-Rate Housing Program, Mountain View City Code Sections 36.40.10 Through 36.40.25 (Attachment 2 to the Council report).
3. Adopt a Resolution Amending the Master Fee Schedule to Rescind the Rental Housing Impact Fee (Attachment 3 to the Council report).

BACKGROUND

The City Council has deliberated on affordable housing issues a number of times over the past year and a half. At a Study Session on September 12, 2017, the City Council provided input on a variety of wide-ranging issues, including potential modifications to existing rental and ownership housing policies and programs, how to achieve more development of affordable housing units instead of accepting payment of housing fees, and how to facilitate housing for the “missing middle.” The Council recommended several modifications to the City’s Below-Market-Rate (BMR) Affordable Housing Program and the Rental Housing Impact Fee Program.

- Increase the current 10 percent affordable housing requirement in the BMR Program.

- Increase the Rental Housing Impact Fee (in light of AB 1505, the BMR Rental In-Lieu Fee will be modified to reflect the City Council's desire to increase housing fees).
- Include the Moderate-Income category for rental housing, and achieve a range of incomes within the Low-Income and Moderate-Income categories.
- Expand the Moderate-Income category for ownership housing.
- Increase the amount and threshold for ownership in-lieu fees.
- Explore changing the in-lieu fee methodology for ownership housing from 3 percent of closing price to a per-square-foot (psf) amount.

At the conclusion of the affordable housing Study Session, the City Council requested that staff return to a subsequent Council meeting to provide a summary of the Study Session discussion. Shortly after the Study Session, Governor Brown signed a legislative "housing package" containing 15 bills to help address the State's housing crisis. One of those bills is AB 1505, also known as the "Palmer Fix." The bill is a response to *Palmer v. City of Los Angeles*. This case caused cities to suspend their rental inclusionary housing programs if they had one. AB 1505 restores the ability for cities to implement inclusionary housing for rentals. The law went into effect January 1, 2018.

The City's BMR Affordable Housing Program was originally adopted in 1999. The program covers both ownership and rental housing. Due to the *Palmer* case, the City paused the rental portion of the BMR Program in 2009, but continued to implement the ownership portion. In 2012, the City adopted a Rental Housing Impact Fee (RHIF). The passage of AB 1505 allows the City to restore the BMR Rental Program. The RHIF resolution contemplated future State legislation overturning the *Palmer* decision. It states:

"If state legislation is adopted that reinstates the City's option of requiring developers of market-rate housing to provide affordable rental housing on-site to mitigate impacts, the Council shall consider amending the Master Fee Schedule to rescind this rental housing impact fee."

The City Council held the affordable housing Study Session follow-up on November 28, 2017. During the meeting, the City Council supported a two-step, or phased, process to modify the BMR Program and directed the first step to be implemented immediately. It includes the following:

- Increase the overall BMR affordable housing requirement for both rental and ownership units from 10 percent to 15 percent.
- Replace the existing BMR Rental In-Lieu Fee with a per-square-foot (psf) fee equivalent to the increased percentage requirement as determined by the Council. The current BMR Rental In-Lieu Fee methodology is 3 percent of the appraised value of all the rental units.
- Add language to the BMR Program to allow developers to provide an alternative mitigation to the 15 percent on-site requirement, without specifying what the alternative mitigation should be. This would provide both the City and developers the flexibility to explore alternative mitigations during the first stage of the BMR modification process—and prior to the longer-term process that would include assessment of specific alternative mitigations—in a manner that meets the intent of the BMR Program. City Council approval is required for any alternative mitigation.

Modification of the BMR Program requires a Zoning Text Amendment, which requires input from the Environmental Planning Commission (EPC), as well as updating the BMR Guidelines. These items were presented at the January 17, 2018 EPC meeting and the summary is provided in the Analysis section below.

The second step involves an overall update of the BMR Program and Guidelines, including the various items identified by the City Council at the Study Session and other items such as alternative mitigations and in-lieu fees. Staff estimates that comprehensive modifications to the BMR Program could take approximately 9 to 12 months, and would include a public outreach process. The process could take longer if additional aspects of the BMR Program are identified as potential areas of modifications or inclusion.

ANALYSIS

EPC Meeting – January 17, 2018

BMR Program Modifications

At the January 2018 meeting, the EPC considered the following amendments to the BMR Program:: increasing the percentage requirement for affordable housing, modifying the Rental In-Lieu Fee, and adding a flexible alternative mitigation option. The proposed ordinance amendments are included as Attachment 1 to this staff report. The revised BMR Guidelines that reflect these three modifications as supported by the City Council can be found in Attachment 2. The per-square-foot Rental In-Lieu Fee is calculated based on analyses indicating that \$17.86 per net new habitable square foot is equivalent to 7.75 percent of units on-site as affordable. A fee equivalent to a 15 percent BMR requirement translates into \$34.57 per net new habitable square foot. This amount would be increased annually by the Consumer Price Index.

EPC Recommendations and Comments

The EPC recommended the Council modify the BMR Program on a 6-0-1 vote (one Commissioner was absent when the vote was taken), with the following considerations/modifications:

- *Supported the increase in the percentage requirement to 15 percent (7-0 straw poll).*
- *Supported the \$34.57 psf Rental In-Lieu Fee and recommended that outreach be conducted during the second phase of the modification process to receive input from advocates and developers (7-0 straw poll).*
- *Recommended clarifying the in-lieu fee should be for fractional units and cannot be used as an alternative mitigation, and that any alternative mitigation must be greater than the 15 percent requirement (7-0 straw poll).*

Based on EPC input, it is proposed that Section D (Alternative Mitigations) of the BMR Administrative Guidelines be modified as follows:

“As an alternative to building the affordable housing units ~~or paying the in-lieu fee,~~ developers of market-rate residential projects may submit a request to meet their affordable housing obligations through other means, such as the dedication of land, the provision of other resources, or other alternatives. Such requests may be granted at the sole discretion of the City Council, if the City Council determines that such alternative

will further affordable housing opportunities in the City to ~~an equal or a~~ greater extent than the affordable housing obligation.”

Effective Date

The City Council is scheduled to hold a second reading of, and formally adopt, the Ordinance for a modified BMR Program on February 27, 2018. If approved, the effective date could be set at thirty (30) days after the second reading, or be set further in the future than 30 days. New or adjusted fees generally become effective 60 days after adoption.

The Council could also choose to exempt projects that have reached a certain point in the entitlement process. The RHIF and the previous increase to the Housing Impact fees became effective 60 days after adoption with no exemptions for projects in the pipeline. When the BMR fees and Housing Impact fees were first adopted, the fees became effective 90 days after adoption and projects that had approved Development Review Permits or a complete Zoning Permit Application before that date were exempted. Staff is aware that there may be two to three residential projects that seek to have a complete formal application submitted by the effective date of the BMR modifications.

On December 5, 2017, the City Council determined that Prometheus' Gatekeeper project on Villa Street shall be subject to a 15 percent affordable housing requirement: although a formal application has been filed, the project has not been approved. A similar approach could be taken whereby Gatekeepers must have project approval to be exempt from the modifications to the BMR program. Besides the Villa Street project, the Council has authorized three other residential Gatekeepers that have submitted applications: one of the projects includes 20 percent of the units as affordable, the second project includes 10 percent of the units as affordable, and the third currently does not include any affordable units. None of these Gatekeepers are scheduled to receive project approval by the completion of the first step of the modification process.

EPC Recommendations and Comments

- *Recommended that the effective date be set at 60 days after the second reading (7-0 straw poll).*
- *Recommended that non-Gatekeeper projects be exempt from the requirements of a modified BMR Program if a complete formal application has been submitted by the effective date (7-0 straw poll).*

- *Recommended that Gatekeepers be exempt from the requirements of a modified BMR Program if it has received project approval by the effective date (5-1-1 straw poll; one Commissioner was absent for this vote).*

The Ordinance has been drafted per the EPC's recommendations. If the Ordinance becomes effective 60 days after the second reading, the modified Ordinance would become effective April 28, 2018. The Council can modify the Ordinance if it desires a different effective date.

Participant Priorities

At the January 2018 EPC meeting, the Commission discussed participant priorities for BMR units. Staff recommended the current BMR participant priorities be updated to comply with Housing and Urban Development standards and include a priority only to those who live or work in the City of Mountain View without any durational requirements (as currently exists). The bases for this modification are to align the BMR Program with the live/work preference used for City-financed affordable housing developments, as well as to comply with fair housing regulations.

EPC Recommendations and Comments

- *Recommended to review legality of existing BMR participant priorities for public safety employees and teachers who work in the City of Mountain View (7-0 straw poll).*
- *Recommended to replace the durational requirements of the live/work priority in the existing BMR Program with a live/work priority with no durational requirements (7-0 straw poll).*

Staff has drafted the Ordinance in a manner that complies with fair housing requirements and aligns with City-financed affordable housing developments, and included a live/work priority.

Rental Housing Impact Fee

As mentioned, the RHIF resolution contains language stating that the City Council shall consider rescinding the fee if State legislation reinstates the ability of jurisdictions to require affordable housing as part of a market-rate project. Staff has prepared a resolution that modifies the master fee schedule to rescind the fee and the effective date of the resolution will be the same as the effective date of the ordinance (Attachment 3).

FISCAL IMPACT

This first step of the modification process could reduce the revenues received through the City's housing programs while resulting in the construction of more affordable units by developers. The BMR Rental In-Lieu Fee amount is recommended only for fractional rental units and not as an alternative to building the required affordable housing units. However, these changes are intended to facilitate the actual production of affordable housing, which aligns with the Council's desire to see units built rather than fees paid.

CONCLUSION

The modifications to the BMR Program presented here is the first step of a two-step modification process. These modifications are a result of City Council and EPC input over the last several months to increase the City's ability to facilitate more affordable housing, as well as the renewed ability of local jurisdictions to require affordable housing in market-rate developments. It is recommended that the City Council:

1. Introduce an Ordinance Amending the Below-Market-Rate Housing Program Ordinance, Mountain View City Code Sections 36.40.10 through 36.40.25, and set a second reading for February 27, 2018.
2. Adopt a Resolution Amending the Associated Below-Market-Rate Housing Program Administrative Guidelines.
3. Adopt a Resolution Amending the Master Fee Schedule to Rescind the Rental Housing Impact Fee.

ALTERNATIVE

Provide other direction.

PUBLIC NOTICING

Agenda posting, news publication, and notification to interested parties.

Prepared by:

Wayne Chen
Acting Assistant Community
Development Director/Housing and
Neighborhood Services Manager

Approved by:

Randal Tsuda
Community Development Director

Daniel H. Rich
City Manager

WC/7/CAM
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- Attachments:
1. Ordinance Amending the Below-Market-Rate Housing Program Ordinance, Mountain View City Code Sections 36.40.10 through 36.40.25
 2. Resolution Amending the Associated Below-Market-Rate Housing Program Administrative Guidelines
 - a. Exhibit A – Draft BMR Guidelines
 3. Resolution Amending the Master Fee Schedule to Rescind the Rental Housing Impact Fee
 - a. Exhibit A to Resolution Amending the Master Fee Schedule to Rescind the Rental Housing Impact Fee