Council Questions

December 12, 2023 - City Council Meeting

ITEM 3.1 Historic Preservation Ordinance and Historic Register Update: Scope of Deliverables and Analysis

1. Is it a requirement to disclose whether a building or site is considered historic, or potentially historic, whether it is on any list when a property is sold?

   A seller's agent has a duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties (Cal. Civ. Code § 2079.16). This would likely include historic status if the property were on the Historic Register, or the property was on the Register, but the owner opted to remove it from the list. The City publicly publishes this information on the website (see link below). However, if a property's historic status is unknown, there may not be documented information for the realtor to disclose.

   https://www.mountainview.gov/our-city/departments/community-development/planning/development-projects/historic-preservation-and-register-update

ITEM 6.1 Review of the Below-Market-Rate Affordable Housing Program

1. What was the in-lieu fee for rental housing prior to being raised to $34.57 / sf?

   The $34.57/sf fee was established as part of the Phase 1 updates in 2018. Prior to the Phase 1 update, the BMR rental in-lieu fee under the original program was $17.86/sf. The $17.86/sf amount was estimated to be equivalent to 7.75 percent of units on-site as affordable. The Phase 1 process converted the increased the fee to be equivalent to a 15 percent BMR requirement, which translated into $34.57/sf.

2. Was 2018 the last time the in-lieu fees were evaluated? If they were set at $34.57 in 2018 and increase annually by CPI, what are they now? Does staff think the fee level currently reflects the cost of construction of a unit?

   The 2019 Phase 2 process updated the fees significantly to be economically equivalent to providing the on-site BMR units. The fees are currently:

   - $111/net new habitable sq ft for Rental Housing.
   - $144/net new habitable sq ft for rowhouse/townhouse ownership projects.
   - $63/net new habitable sq ft for other ownership projects.

   The fees are updated annually by CPI. During the pandemic, residential development costs increased significantly and likely have outpaced the annual increases in the in-lieu fee. Therefore, the current fee level is likely less than the current cost of constructing a unit. It remains to be seen if construction costs will normalize and return to previous levels.

3. Heard two main requests from low-income Mountain View residents regarding improvements in the BMR program. One is for assistance with the application process, which some find too complicated to complete.

   To help applicants complete the BMR application and to simplify the process, staff provides multiple resources:

   - Frequent BMR informational webinars with live demonstrations and Q&A. Webinars are recorded and linked to the Housing website.
   - Attend an assistance event with our third-party administrator, HouseKeys, (they offer informational sessions and FAQ sessions). These are offered during the weekday and some Saturdays.
   - Schedule an individual appointment with the customer service team with HouseKeys. Applicants can schedule by calling in or booking an appointment online.
   - Visit the Housing and Eviction help center for assistance filling out the application.
   - Assistance is available in Spanish, Chinese, and Russian.

   Staff continually seeks input and evaluates ways to make the process easier and user-friendly. Specific input can be provided to Anna Reynoso at anna.reynoso@mountainview.gov

4. The second is that many BMR and affordable housing residents say they are told to move out fairly suddenly when their income goes up just a little and they would like some measures taken to improve this situation.

   This situation should not happen. There is an annual recertification process for existing tenants. The current BMR Program allows existing tenants to exceed the AMI levels of the units (up to 100 percent AMI units) and remain in the unit until they exist certain income thresholds. Once the over-income thresholds are exceeded, tenants still have one year to transition out of the of the BMR unit. The allowances are as follows:

   - A household qualifying for a BMR rental unit with rents up to 80 percent AMI may earn up to 95 percent AMI for any BMR unit in this range and still remain in the unit. If a low-income household exceeds the 95 percent AMI threshold, the household has up to one year to transition out of the BMR unit.
   - A household qualifying for a BMR rental unit with rents at greater than 80 percent AMI up to 100 percent AMI may earn up to 105 percent AMI for any BMR unit in this range and still remain in the unit. If a household exceeds the 105-percentage point threshold, the household has up to one year to transition out of the BMR unit.

- A household qualifying for a BMR rental unit with rents greater than 100 percent AMI up to 120 percent AMI may not become over-income for any BMR unit in this range. If a household exceeds the AMI level of the unit, the household has up to one year to transition out of the BMR unit. For example, a household that qualifies for a BMR unit with rents set at the 120 percent AMI affordability level can earn up to 120 percent AMI and still remain in the unit. Once the household earns above 120 percent of AMI, then the household has up to one year to vacate the BMR unit.

Last year during the recertification process there was only one household who was well over income, and they were provided 12 months to relocate as well as assistance to find alternative housing. This year HouseKeys is about 95% done with recertifications and no one has been over income.

If tenants believe they are receiving improper or incorrect notices to move out, they should contact Housing staff and/or Housekeys to discuss their situation. The City will continue working with HouseKeys to ensure property managers to comply with program requirements.

5. Is item 6.1 on our agenda this week a good time to talk about those situations, and if not, when would be a good time?

   If Council has any input or direction about this issue, it can be provided at this Study Session.

6. The staff report, under the heading, Alternative Mitigation Requirements—Options to Increase Mobility and Access to Opportunity, says that “The 2023-2031 Housing Element includes Program 2.6 (Affirmatively Furthering Fair Housing), which requires the City to adopt incentives and zoning to facilitate property owners south of the El Camino Real Precise Plan such as dedicating land to affordable housing developers or building affordable housing... To help meet Program 2.6, the City can adopt incentives specifically targeting off-site alternative mitigations south of the El Camino Real Precise Plan. For example, a large development in the northern part of the City could work with affordable housing developers and one or more property owners south of the El Camino Real Precise Plan to fulfill their BMR unit requirements in the locations identified in the Housing Element.” Can you offer any other mitigation options, or is this the main one that comes to mind?

   Program 2.6 was identified to address another item in the Housing Element via the BMR program and to incentivize housing south of El Camino Real. However, there could be other options to address mobility and access to opportunity or incentivize affordable housing in priority areas. Examples could include identifying other high-opportunity areas in the City or requiring that the off-site units be delivered in close proximity to the market rate project. If Council has any principles or considerations it would like to explore, staff will evaluate and bring back options as part of the BMR code updates.

7. The staff report says that “Based on legal review and analyzing trends of how cities have been implementing AB 1505, cities cannot mandate that the alternative mitigation be a greater value than the on-site BMR... [because] Requiring a greater value may cause the alternative mitigation to be infeasible...” But it also may not make the project infeasible, so in that case can we mandate that the alternative mitigation be a greater value?

   Staff recommends that any alternative mitigation be an equal value to the on-site BMR production requirement. The alternatives are legally required to be available to replace the fifteen percent on-site BMR requirement for rental housing projects. Thus, the alternatives cannot be more burdensome or expensive to comply with than the on-site requirement, even if a more expensive alternative requirement were feasible for a particular project. The alternative does need not be less than value of the on-site units, but under AB 1505 there is not a legal basis to require an applicant to contribute a greater value simply because they want to use an alternative option, particularly when the purpose of AB 1505’s requirement for alternatives is to protect the feasibility of market rate housing production.

8. Please give us some detail regarding what “by-right” means in this case. Does it mean that if the developer picks this option, then no questions asked about how they implement it?

   If an approval is by right, it must be approved if it meets predefined standards. The City has the authority to develop criteria and requirements in advance for by-right options that a developer must meet. Staff recommends that additional criteria including affirmatively furthering fair housing requirements be included for the by-right options that Council selects, which will be brought forward for The City will review alternative mitigation requests to determine if the specifics of the request meet the requirements. If not, staff would work with the developer to modify their request to meet the requirements. If the developer does not meet the requirements, the City is not required to approve the alternative mitigation request. If the requirements are met and the City approves an alternative, then the City would still oversee the alternative mitigation’s implementation to ensure each of the City’s predefined standards are satisfied.

9. Has any developer ever proposed any alternative mitigations not specifically listed in the BMR program in the past? If so, what was it and did we follow through with it?

   There has not been a project subject to the current Phase 2 that has an approved alternative mitigation. Nearly all projects subject to the Phase 2 on-site BMR requirements will or propose to provide the on-site units.

   However, Council approved an alternative mitigation for Prometheus’ Gatekeeper project at 1720 Villa St (The Tillery), which includes three on-site BMR units as well as the preservation and rehabilitation of 48 CSFRA units at 660 Mariposa. Prometheus successfully completed 660 Mariposa in 2022. Preservation/rehabilitation is currently not specifically listed in the BMR Program. The Tillery/660 Mariposa project is one reason why staff recommends Council consider acquisition/preservation as a potential by-right option. It can also help address tenant displacement.

10. Please describe the units that have been included in the Ownership housing. For instance, how many are condos, ADUs, etc.

   The existing BMR ownership units are primarily townhomes and single-family homes. The pipeline BMR ownership units include primarily condos and rowhomes, and a few single-family homes. There are no existing BMR ADU’s and Phase 2 excludes ADU’s.