



DATE: June 18, 2019

CATEGORY: Public Hearing

DEPT.: Community Development

TITLE: **Below-Market-Rate Housing Program Phase 2 Modifications**

RECOMMENDATION

1. Introduce an Ordinance Amending Article XIV of Chapter 36 of the Mountain View City Code, Sections 36.40 to 36.40.70, Regarding the Below-Market-Rate Housing Program, to be read in title only, further reading waived, and set second reading for June 25, 2019.
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 Through 36.40.70, to be read in title only, further reading waived (Attachment 3 to the Council report).

BACKGROUND

In late 2017, the City Council held two Study Sessions providing input on, among other housing strategies, modifications to the City's Below-Market-Rate (BMR) Housing Program. Those modifications have been processed in two phases. Phase 1 was completed in February 2018 and went into effect April 2018. It included increasing the BMR affordable housing requirement for rental units from 10 percent to 15 percent, updating the BMR Rental In-Lieu Fee with a per-square-foot fee equivalent to the 15 percent requirement, and adding language to the BMR Program to allow developers to request an alternative mitigation.

Phase 2 involves an overall update of the BMR Program, including the various modifications identified by the City Council at previous Study Sessions that were not included as part of Phase 1, such as increasing the BMR ownership requirement to 15 percent, incorporating the Council's direction regarding the Moderate-Income category, and modifying the in-lieu fee methodology. In addition to the Council-requested BMR modifications, other related program design elements have been incorporated into

Phase 2 modifications for Environmental Planning Commission (EPC) and Council consideration for the BMR program to have overall internal consistency.

A community meeting to discuss Phase 2 modifications was held on March 21, 2019. The EPC and City Council held Study Sessions on April 29, 2019 and May 14, 2019, respectively, to provide input on Phase 2 modifications (see Attachment 1 for City Council Study Session report), and the input has been used to finalize amendments to the BMR Ordinance (Attachment 2) and Phase 2 Guidelines (Exhibit A to Attachment 3). Because amendments to the City's Zoning Ordinance require a public hearing by the EPC, the final BMR amendments were subsequently heard at a May 30, 2019 EPC public hearing. Council Study Session input and the EPC public hearing are summarized below.

ANALYSIS

At the May 14, 2019 Study Session, Council provided input on the following seven questions.

- *Question No. 1: Does Council support a higher BMR requirement for rowhouse/townhouse projects, up to 25 percent?*

Council determined that rowhouse/townhouse projects should be subject to the 15 percent BMR requirement at 100 percent AMI weighted average. The Council also directed staff to assess if the BMR program could allow for an AMI level above the Moderate-Income level, up to 150 percent AMI. If so, the Council also supported allowing rowhouse/townhouse projects the option of a 20 percent BMR requirement at a 120 percent AMI weighted average.

Staff has determined that the BMR program can allow BMR units to be sold up to 150 percent AMI. However, BMR ownership units above 120 percent AMI would not count towards the City's regional housing needs allocation (RHNA) affordability goals. Additionally, staff recommends that, if in-lieu fees are requested as an alternative mitigation and is granted by Council, those fees be limited to funding affordable housing developments at 120 percent AMI and below.

- *Question No. 2: Does Council support the recommended BMR on-site requirements for rental and for-sale projects, including BMR units in perpetuity?*

Council supported the recommended BMR on-site requirements for rental and for-sale projects, including BMR units in perpetuity.

- *Question No. 3: Does Council support the recommendations regarding alternative mitigations?*

Council supported the recommendations for alternative mitigations.

- *Question No. 4: Does Council seek to facilitate the delivery of BMR units on-site by setting the fee level equivalent to the value of on-site units (calculated at \$96 per net habitable square foot for rental projects and \$54.50 per net habitable square foot for for-sale projects)?*

Council supported the fee equivalencies at \$96 per net habitable square foot for rental projects and \$54.50 per net habitable square foot for ownership projects.

Per Council direction in Question 1 to provide rowhouse/townhouse developments the option of a 20 percent BMR requirement at 120 percent AMI weighted average, the in-lieu fee equivalent to the 20 percent requirement is \$92 per net habitable square foot. Staff recommends that this fee be adopted, with the reiteration that in-lieu fees are an alternative mitigation that must be requested, that any such fees received by the City be invested in affordable housing developments no greater than 120 percent AMI, and that BMR units on-site is the requirement of the program.

- *Question No. 5: Does Council agree with the exemption provision for Phase 2 modifications noted above?*

Council supported staff's recommendation for the exemption provision for non-Gatekeeper projects. However, Council recommended that Gatekeeper projects currently in the pipeline that, by the end of the 2019 calendar year, are deemed ready for a public hearing regarding project approval shall be exempt from Phase 2 modifications. Staff recommends that December 20, 2019 (last day before holiday closure) be the last day that a Gatekeeper project could be deemed ready for a public hearing regarding project approval.

- *Question No. 6: Does Council support the two-tiered approach outlined above for ongoing tenant eligibility?*

Council supported the concept of balancing the stability of existing tenants and placing eligible households on the waiting list into a BMR rental unit. However, Council noted particular concern about tenants becoming over-income for the BMR unit but still being unable to afford market rents, which could result not only in leaving the BMR unit, but also Mountain View. This concern would especially

impact tenants on the lower end of the income range (for example, between 50 percent and 80 percent AMI). Council felt that the original staff recommendation of allowing tenant incomes to go 10 percentage points over a BMR unit's AMI level was not enough to address this policy concern and was open to options to achieving greater stability for existing tenants in BMR units, such as: (1) allowing existing tenants to become over-income by more than 10 percentage points; (2) allowing tenants at different income levels to become over-income by different amounts; (3) allowing tenants a longer period to transition out of a BMR rental unit if they no longer income-qualify; and/or (4) allowing the rent levels of BMR units to "float up" or increase with the increasing incomes of existing tenants.

Based on Council input, staff analyzed the current average rents in Mountain View. Table 1 below was provided for the EPC public hearing that included average overall rents. However, because the City has a rent stabilization program via the Community Stabilization and Fair Rent Act (CSFRA), it is instructive to distinguish the rents of CSFRA units (pre-1995), units after 1995 and prior to CSFRA implementation (2016), the newest units (units after 2016), and the average of all units. The additional data is highlighted in light gray in Table 1 below.

Table 1. Comparison of Average Rents with BMR Rents at Different Income Levels

	Studio	1 Bedroom	2 Bedrooms	3 Bedrooms
Average Rents Citywide (CSFRA and non-CSFRA units; excludes affordable units)				
Average overall rents – all units	\$2,125/mo.	\$2,640/mo.	\$3,408/mo.	\$4,004/mo.
Average rents – CSFRA Units pre-1995	\$2,077/mo.	\$2,363/mo.	\$3,145/mo.	\$3,944/mo.
Average rents – Units 1995-2016	\$3,812/mo.	\$3,922/mo.	\$4,903/mo.	\$5,637/mo.
Average rents – Units after 2016	\$3,546/mo.	\$4,094/mo.	\$5,567/mo.	\$6,737/mo.
BMR Rents				
Maximum moderate-income rents (120% AMI)	\$2,760/mo.	\$3,150/mo.	\$3,550/mo.	\$3,940/mo.
Maximum median-income rents (100% AMI)	\$2,300/mo.	\$2,630/mo.	\$2,960/mo.	\$3,285/mo.
Maximum low-income rents (80% AMI)	\$1,820/mo.	\$2,080/mo.	\$2,340/mo.	\$2,600/mo.

Note that the average CSFRA rents (Row 4) are lower than the average overall rents for all units (Row 3), while the average rents for units not subject to CSFRA (i.e., market rents in Rows 5 and 6) are substantially higher than CSFRA units and

the average overall rents. Separately, most of the BMR rents (Rows 8 to 10) are lower than average CSFRA rents and average overall rents (except Moderate-Income rents are higher than the average overall rents), but all BMR rents are substantially lower than market rents (i.e., non-CSFRA units).

As new higher-cost rental units are built, CSFRA units as a proportion of the overall rental stock will decrease, and this shift in the rental composition would cause average rents to increase. However, because the majority of Mountain View's rental housing supply continues to be the older housing stock under the CSFRA, it will continue to have a tempering effect on average overall rents for some time.

Based on this analysis and Council direction for greater stability for existing BMR tenants, staff recommends the following "graduated" over-income scale:

- Tenant households in units up to 80 percent AMI shall be allowed to have incomes exceeding the 80 percent AMI level by 15 percentage points (i.e., income allowed to go up to 95 percent AMI) and shall have one year to relocate once they exceed the 15-point threshold.
- Tenant households in BMR units over 80 percent AMI up to 100 percent AMI shall be allowed incomes exceeding the 100 percent AMI level by 5 percentage points (i.e., income allowed to go up to 105 percent AMI) and shall have one year to relocate once they exceed the 5-point threshold.
- Tenant households in units over 100 percent AMI may not be allowed to be over-income and shall have one year to relocate once they become over-income.

Staff believes it would be preferable to allow tenants to become over-income and maintain the BMR AMI/rent levels, rather than to allow BMR AMI levels/rents of the BMR unit to increase (i.e., float) because: (1) administration of floating BMR AMI levels/rents would be more complex to track and monitor over time; (2) keeping the BMR units at the designated AMI levels allows the project to stay in compliance with the overall weighted average requirements, whereas allowing BMR AMI levels/rents to increase would mean that future BMR units that become vacant would need to have their AMI/levels lowered accordingly and this would further add to administrative complexity; and (3) allowing rents to increase means that the property owner would receive more rent, but the City would not receive additional BMR benefits.

- *Question No. 7: Does Council have input on other components of Phase 2 modifications?*

Council provided the following additional input:

- Incorporate a periodic review of the BMR program, for example, every five years (Council supported). This recommendation shall be incorporated into BMR procedures.
- Concern about annual rents for BMR units increasing too fast for existing tenants (comment made by one Councilmember, no further Council discussion). Staff will take this under advisement.
- Lower AMI range for BMR rentals, capped at 100 percent AMI (comment made by one Councilmember, no further Council discussion). Staff anticipates taking no further action.
- Adjust in-lieu fees annually by CPI both up and down. Staff will incorporate the annual changes in fees in the City's Master Fee Schedule.

Summary of May 30, 2019 EPC Public Hearing

Based on Council's input summarized above, modifications were incorporated into the BMR Ordinance and Administrative Guidelines (see Attachments 2 and 3). At its May 30, 2019 public hearing, the EPC approved adoption of a resolution recommending that the City Council amend the BMR Program Ordinance and Guidelines, with a 5-0-2 vote (two Commissioners were absent). The EPC also wanted to forward the following input for Council consideration:

- Regarding Council input for Question 1 on the option for rowhouse/townhouse projects to have a 20 percent BMR requirement at a 120 percent AMI weighted average with a range of 80 percent to 150 percent, the EPC wished to emphasize the following:
 - Units over 120 percent AMI would not count towards the affordable housing categories for the purposes of RHNA and to specifically have the Council consider if it wants to allow the option for rowhouse/townhouse projects to go over 120 percent up to 150 percent AMI given RHNA.
 - The EPC felt that another reason to not allow rowhouse/townhouse projects to go over 120 percent AMI is that, although Moderate-Income

households are unable to afford ownership opportunities at market prices, those households can nevertheless afford rental units given current average rents Citywide.

- The EPC wanted to make sure that Table 1 comparing various rent levels is included in this Council report. Staff has updated Table 1 from the EPC report to include average rents for all units overall, CSFRA units, units built between 1995 and 2016, and units built after 2016. This additional information provides better clarity to distinguish “average” rents from “market” rents, given the fact that Mountain View has a rent stabilization program.
- Regarding Council input for Question 3 on alternative mitigations, one Commissioner noted that the Administrative Guidelines (Attachment 3– Exhibit A) stipulate that the alternative mitigation to build BMR units off-site has a 20 percent BMR requirement, whereas the BMR on-site requirement is 15 percent. This represents a 33 percent increase (20 percent divided by 15 percent) in the BMR requirement. However, the Administrative Guidelines do not include a similar standard for the other alternative mitigations (such as land dedication and in-lieu fees). EPC suggested incorporating the principle of a 33 percent additional requirement for other alternative mitigations, such as for in-lieu fees, but did not want to stipulate it as a specific, fixed percentage requirement. Staff noted that additional standards would be incorporated in BMR procedures for alternative mitigations, that having some flexibility to create those additional standards in procedures would be helpful, and that those additional standards would at least consider the 20 percent off-site requirement as a reference point.
- Regarding Question 6 on the two-tiered approach for ongoing tenant eligibility, as mentioned above, staff made modifications based on: (1) Council concern about existing BMR tenants needing to vacate a BMR unit and potentially needing to leave Mountain View because they cannot find affordable rental alternatives; and (2) Council emphasis on providing additional stability and flexibility for existing BMR tenants to stay in their rental unit. EPC had the following input regarding ongoing tenant eligibility and staff’s modification:
 - EPC was concerned about how the BMR program would work over time, specifically: (1) asking what happens if BMR rents at specified AMI levels are set for a project but, later, average rents drop below those BMR rents in the future; and (2) stipulating that BMR rents should not

exceed average rents. These comments align with the intent of the BMR program and these concerns can be easily addressed in BMR procedures.

- EPC felt that the modification for additional tenant flexibility as described in Question 6 above and in the Administrative Guidelines (Attachment 3–Exhibit A) per Council input could lead to a “windfall” if, say, a tenant in a BMR unit with rents fixed at 50 percent AMI ends up increasing their income up to the recommended allowable amount of 95 percent AMI, and one Commissioner was concerned that BMR tenants might stay in the unit for the wrong reasons. These concerns led the EPC to recommend that Council consider allowing incomes to go up to the recommended 95 percent AMI level, but also have BMR rents increase, though at a slower rate and not as high as 95 percent (instead of keeping BMR rents at a fixed AMI level per staff’s recommendation); the difference between the new (higher) BMR rent versus the original BMR rent would then go to the City as a way to capture tenant windfall.

Staff believes that the recommended modifications as contained in this Council report and the attachments (i.e., allow incomes to go up in a graduated manner but keep the BMR rents fixed at the initial AMI levels) provide a balanced approach to meeting multiple objectives, including responding to the Council’s priority of enhanced tenant stability, facilitating compliance with the BMR program, and facilitating ease of program administration. If the Council feels that allowing lower-income tenants to go up to 95 percent AMI while keeping BMR rents at the original AMI level is considered a windfall to the tenants, and the Council feels that an appropriate policy response is to recapture some of that windfall by increasing BMR rents and having that marginal rent increase go to the City, then staff recommends that this be first considered as part of the five-year BMR program evaluation going forward. At that time, data can be analyzed to determine if and to what extent tenant incomes actually increase over time, how effectively the recommended modification is working in providing tenant stability, and compliance with the BMR program requirements.

FISCAL IMPACT

Phase 2 BMR modifications include the ability for an applicant to request an alternative mitigation to the BMR on-site requirement. Payment of an in-lieu fee (instead of the objective standard of providing BMR on-site units) is one example of an alternative mitigation. If an applicant requests payment of an in-lieu fee, the request meets the

alternative mitigation parameters, and the Council approves the request, the in-lieu fee would go into the City's BMR Housing Fund to finance 100 percent affordable housing projects. At the May 14, 2019 Study Session, the Council supported in-lieu fee levels based on equivalency to providing BMR on-site units as noted in Question 4 above. Although these Phase 2 fee levels based on equivalency would be higher than the fee levels in the current BMR program, the current and past BMR program allowed in-lieu fees to be paid more easily than in Phase 2 modifications. As a result, it is unclear what the net fiscal impact of Phase 2 modifications would be to the City.

NEXT STEPS

BMR Phase 2 modifications are scheduled for a second reading on June 25, 2019. If adopted, the modified Program would go into effect on August 24, 2019, sixty (60) days after the second reading per Council direction.

CONCLUSION

During two Study Sessions held in late 2017, the Council provided direction to modify the City's BMR Housing Program, including increasing the 10 percent BMR requirement for rental and ownership projects to 15 percent. The modifications have been conducted in two phases. Phase 1 went into effect in April 2018. The EPC and Council held Study Sessions in April and May 2019, respectively, and further modifications were made to the BMR Program based on Council direction. At its May 30, 2019 public hearing, the EPC recommended that the Council amend the BMR Housing Program Ordinance and Guidelines for Phase 2 modifications with additional input for Council consideration as summarized above. It is recommended that the Council approve the recommended Phase 2 modifications for the BMR Ordinance and Administrative Guidelines as presented in this report and in the attachments.

ALTERNATIVES

1. Approve staff's recommendation to amend the BMR Program as provided in Attachments 2 and 3.
2. Provide other direction.

PUBLIC NOTICING

Agenda posting and the public notice for this meeting was also published in accordance with Government Code Section 65090.

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- Attachments:
1. Council Study Session Report
 2. BMR Housing Program Ordinance Amendments
 3. Resolution to Adopt Administrative Guidelines Amendments