



COUNCIL REPORT

DATE: June 24, 2025

CATEGORY: Public Hearing

DEPT.: Housing

TITLE: **Modification of 777 West Middlefield Road Below-Market-Rate Housing Requirements**

RECOMMENDATION

Adopt a Resolution of the City Council of the City of Mountain View: (1) Amending City of Mountain View Resolution No. 18329 to Modify Condition of Approval (“COA”) No. 66 to Increase the Income Eligibility For Moderate-Income Housing Units From 120% of the Area Median Income to 150% of the Area Median Income (“AMI”) For Qualifying Mountain View Whisman School District (“MVWSD”) and City Employees; (2) Finding That Pursuant to California Code of Regulations Section 15060(C)(2) the Proposed Modification to COA No. 66 Is Not Subject to the California Environmental Quality Act; and (3) Authorizing the City Manager or Their Designee to Amend the Below-Market-Rate (“BMR”) Regulatory Agreement to Increase the Income Eligibility For Moderate-Income Housing Units From 120% AMI to 150% AMI For Qualifying MVWSD and City Employees and Extend the Amount of Time MVWSD Teachers and Staff Have to Vacate an Income-Restricted BMR Unit After Exceeding the Income Limit From One Year to Three Years, to be read in title only, further reading waived. (Attachment 1 to the Council report).

BACKGROUND

[On May 21, 2019](#), the City Council approved the residential Gatekeeper project located at 777 West Middlefield Road (now called “The Sevens”). The overall project includes 716 units, of which 20% are Below-Market-Rate (BMR) units (144 units) to meet project-approval requirements. Council approved the request from the developer (Fort Bay at the time, now Miramar) that the delivery of the BMR units be accomplished via an alternative mitigation instead of meeting the standard BMR requirements, including:

- Off-site delivery of the BMR units (rather than integrated with the market-rate units, which is the objective standard of the BMR program).

The objective standard of the BMR program is the provision of affordable housing units integrated with market-rate units within the same residential building. Instead, the Developer requested the “off-site” alternative mitigation option to deliver the 144 BMR units in a five-story, stand-alone building, physically located within the overall project site

but separate from the market-rate units with 124 BMR units reserved for teachers/staff employed by the Mountain View Whisman School District (MVWSD or District) and 20 BMR units reserved for City staff. The City provided a funding contribution of approximately \$3 million to support the project and to facilitate the reservation of 20 units for City staff.

- Higher income levels to include moderate-income units up to 120% area median income (AMI) for teacher and staff housing.

At the time of the project's approval, the City's BMR program allowed up to 80% AMI for rental projects. Instead, the Developer requested income eligibility up to 120% AMI as many teachers and other staff earn more than 80% AMI. (After the project was approved, the City updated the BMR program to allow incomes up to 120% AMI for rental projects, which will be discussed further below.)

The articulated benefit of this alternative mitigation is that the project would help attract and retain teachers and provide moderate-income housing to teachers and public sector staff to address the "missing middle" housing needs.

As an alternative mitigation project, the Developer partnered with MVWSD to finance and deliver the BMR units. The partnership and financing structure and terms were negotiated directly between the Developer and MVWSD as is typical with such alternative mitigations. The City was not involved in the negotiations (nor was the City asked to be involved) and is not a party to the Developer/MVWSD partnership. However, there is a BMR agreement between the City and MVWSD to ensure that the units meet project requirements.

The BMR requirements are part of the Conditions of Approval (COA) for The Sevens, particularly COA No. 66, indicating that the maximum qualifying income limit is 120% AMI. Additionally, there is a BMR regulatory agreement between the City and MVWSD that stipulates how the BMR units must be operated (Regulatory Agreement), including the AMI levels and income qualifications. The Regulatory Agreement also states that tenants who initially income-qualify but later become over-income can complete their current lease term and have one additional year (grace period) before they must move out.

Key Recent Project Milestones

Over the past several months, MVWSD has achieved the following project milestones:

- October 2024 to Present: MVWSD formed the Staff Housing Oversight Committee (Oversight Committee) to meet periodically, monitor the project, and make recommendations to the MVWSD Board of Trustees as needed to implement the BMR units. The composition of the Oversight Committee includes members of the Board of

Trustees, MVWSD teachers, and one seat for a Mountain View City Councilmember. Housing Department staff have also attended the meetings.

- October 29, 2024: Ribbon cutting event was held at The Sevens to celebrate the impending completion of the project.
- December 2024: BMR application/tenant selection process began for MVWSD and City staff.
- Late February 2025: Tenants began moving into the BMR units.

Challenges with Filling the BMR Units

Table 1 below provides a summary of the units by income levels, allocation to MVWSD and the City, and occupancy status. The table shows that 92% of the 80% AMI units (i.e., low-income units) have been leased up, which demonstrates strong interest. However, only 7% of the 120% AMI units (i.e., moderate-income units) have been leased up, resulting in a 93% vacancy rate. Overall, only 34% of the total units are currently occupied.

Table 1: Summary of The Sevens BMR Units*

	80% AMI UNITS (LOW-INCOME)			120% AMI UNITS (MODERATE-INCOME)			OVERALL OCCUPANCY (%)
	TOTAL	OCCUPIED (%)	VACANT (%)	TOTAL	OCCUPIED (%)	VACANT (%)	
MVWSD	32	29 (91%)	3 (9%)	91	6 (7%)	85 (93%)	35 (29%)
City	5	5 (100%)	0 (0%)	15	2 (13%)	13 (87%)	7 (35%)
TOTAL*	37	34 (92%)	3 (8%)	106	8 (7%)	98 (93%)	42 (34%)

* Table 1 indicates 143 total BMR units. There is also one manager's unit not included here, which brings the project total to 144 units.

During the Oversight Committee meetings, the 120% AMI limit was discussed as a primary barrier for teachers to qualify for the moderate-income units. First, the income limit is based on household income. A teacher's salary alone, or the total household income if there are multiple income earners, frequently exceeds the 120% AMI limit.

Second, while a teacher's household incomes may be under the limit, allowing them to initially qualify, annual salary increases could soon put them over the limit and require them to move out after the one-year grace period. This creates uncertainty and instability for prospective tenants and makes the BMR units less attractive.

According to MVWSD, both of the above factors have contributed to the low lease-up rate of the moderate-income units.

Developer and MVWSD Requests to Modify BMR Requirements

In April 2025, the Developer and MVWSD each submitted requests for the City to consider modifying the BMR requirements. The Developer request focused on increasing the income eligibility from 120% AMI to 150% AMI (Attachment 2 to this Council report). As noted above, the Developer is involved because the 120% AMI maximum-income level is part of COA No. 66 for The Sevens; therefore, increasing the AMI level to 150% requires modifying COA No. 66. Importantly, while the request to modify the AMI maximum affects the COA associated with the Developer's project, approval of the COA modification would benefit MVWSD, which solely operates the 144 BMR units.

Table 2: Household Incomes at 120% and 150% AMI*

	Persons Per Household			
	1	2	3	4
120% AMI	\$164,000	\$187,400	\$210,850	\$234,250
150% AMI	\$205,000	\$234,250	\$263,562	\$292,812

* The incomes associated with 120% AMI in Table 2 are based on 2025 income limits as published by the State Housing and Community Development Department, adjusted for household size. HCD income limits stop at 120%. Therefore, the incomes associated with 150% AMI are calculated by the City extrapolating from HCD's income limits.

The MVWSD request includes extending the grace period where a tenant becomes over-income after moving into a unit from one year to three years along with making the same request as the Developer to increase the maximum-AMI level from 120% AMI to 150% AMI (Attachment 3).

These Developer and MVWSD requests are intended to facilitate lease-up of the moderate-income units. If the units remain vacant, the goal of The Sevens BMR alternative mitigation—which is to provide affordable housing to teachers and staff—will not be met and rents will not be sufficient to allow MVWSD to meet their financial obligations for this project.

If Council approves the requests, the higher income limit and extended grace period will also apply to the 20 units for City staff. Currently, only 35% of the City units are occupied.

Staff recommends that Council approve the requests to achieve the objective of the BMR project.

ANALYSIS

The City can choose to approve the Developer's and MVWSD's requests to increase the AMI limit to 150% AMI and extend the grace period from one year to three years based on the following considerations.

BMR Alternative Mitigation

When the project was approved in May 2019, it did not comply with the City's standard BMR requirements. As noted above, one of the alternative mitigation requests was that the maximum AMI be 120% AMI, which was higher than the 80% AMI maximum that was in place at that time. Instead, Council found that the project's BMR proposal was an alternative way to mitigate the impact of the project's development of market-rate housing.

Similarly, the current request for increasing the maximum AMI level to 150% exceeds the current maximum of 120% AMI. Because The Sevens was originally approved with a BMR alternative mitigation, Council can modify the project without conforming to the City's standard BMR requirements, provided that there are findings that support the AMI increase.

Key findings include:

- High vacancy rate (93%) of moderate-income units as shown in Table 1 above.
- MVWSD conducted an updated teacher/staff survey in March 2025. The survey results indicate that an increase in the household income limit from 120% AMI to 150% AMI would substantially increase the interest and qualified pool of teacher/staff employees for the moderate-income units (approximately 50% increase).
- A key barrier identified by MVWSD is that their employees may be hesitant to apply for the 120% AMI units because of the potential for becoming over-income even though they may initially qualify for the units. Step increases combined with cost-of-living adjustments result in annual increases of approximately 8-9%. Additionally, teachers can earn stipends (which count as income) for coaching, teaching labs, or providing other types of instruction.
- Another significant barrier to filling the 120% AMI units is that BMR qualifications are based on household income, not just the income of an individual MVWSD teacher/employee. The addition of another income earner in the household (e.g. a partner or roommate) significantly increases the likelihood of potential applicants for the 120% AMI units being over-income. For example, in review of the MVWSD's salary schedule, the mid-point of the salary schedule is approximately \$120,000 (not including stipends which count as income). While this is below the \$164,000 for a 1-person household as shown in Table 2 above, the addition of second income earner could easily put that household above the \$187,400 limit for a 2-person household.
- The benefits of providing teacher housing and City employee housing include providing an opportunity to strengthen connections between public workers and the communities they serve as well as reducing commutes and traffic congestion. For example, teachers can

increase their participation in school and student activities if they live in Mountain View instead of commuting farther distances. A higher income limit of 150% AMI and a longer grace period of three years increases the likelihood of achieving the goals of attracting and retaining MVWSD employees.

- MVWSD has noted it makes a significant investment in its teachers. For example, the District implements a two-year induction program for new teachers that provides training and professional development. If a teacher in a BMR unit becomes over-income and has to leave the District, this would limit the benefits of the upfront and ongoing investments made in the teacher's development and abilities.
- There are various MVWSD positions that are difficult to fill, such as bus drivers, qualified maintenance workers, and science and math teachers. If these employees leave the District because they no longer income-qualify for a BMR unit at The Sevens and cannot find alternative housing in Mountain View, it may impact District operations and reduce the staff resources needed to support students.
- The original intent of the BMR alternative mitigation is to attract and retain teachers who are important to the community. If teachers are unable to qualify for the BMR units at the 120% AMI level or the BMR units are not as attractive due to the one-year grace period, then the underlying goal of the project is not met.

State Teacher Housing Act

The State Teacher Housing Act, as codified in Health and Safety Code (HSC) Section 53571, gives school districts the right to prioritize teachers, school district employees, and educational nonprofit employees in school-district funded housing. This reflects a state interest in promoting teacher housing, which can help provide defenses against potential fair housing, disparate impact claims, and establishes that efforts to support teacher housing are in line with legitimate state interests and policies. Additionally, HSC Section 53573 permits school districts to pursue strategies for affordable teacher housing using public/private partnerships and "innovative financing opportunities" for different income levels. Modifying The Sevens BMR requirement to increase the ability for teachers to qualify for the housing would align with this state interest.

Different Terms for "Waterfall" Units

If Council approves the requested modifications, MVWSD would implement the 150% AMI limit and three-year grace period for the units allocated to the school district and to the City. The Regulatory Agreement allows MVWSD to establish a "waterfall" to make the units available to other school districts, including the Mountain View Los Altos Union High School District and the Los Altos School District as well as the general public if there are vacant units that are not leased up by the school districts or the City. MVWSD intends for units that may waterfall to the general

public to stay at the 120% AMI and the one-year grace period. Staff believes there would be sufficient demand from the general public for units at the 120% AMI level given the significantly larger pool of potentially eligible applicants to draw from.

MVWSD can operate the teacher/staff units on different terms from units that waterfall to the general public based on the need for teacher housing and City employee housing to attract and retain employees, which meets the purpose of the BMR alternative mitigation and is supported by the State Employee Teacher Housing Law.

Applicability Limited to The Sevens

If Council approves the Developer's and MVWSD's requested modifications, it is important to note that The Sevens is a unique project that includes teacher and staff housing to meet the purpose of attracting and retaining teachers/staff, which is supported by state law. Therefore, the special consideration for The Sevens is not applicable to other projects that are not similarly situated.

NEXT STEPS

If Council approves the recommendations, COA No. 66 and the BMR Regulatory Agreement will be amended to reflect the changes. COA No. 66 includes the maximum income limit, which will be modified from 120% AMI to 150% AMI. The Regulatory Agreement includes the maximum income limit, which will be modified to include the 150% AMI level, and the grace period, which will be modified from one year to three years.

ENVIRONMENTAL REVIEW

If Council approves the requested BMR modifications, higher-income teachers and staff can qualify for the BMR units. It would not change the number of units allowed on a property, physical development standards, or available development sites. Therefore, changing COA No. 66 will not result in a direct or reasonably foreseeable indirect physical change in the environment. Pursuant to California Code of Regulations Section 15060(c)(2), this action is not subject to the California Environmental Quality Act (CEQA).

FISCAL IMPACT

Modifying the BMR requirements for The Sevens will not have a fiscal impact on the City.

LEVINE ACT

California Government Code Section 84308 (also known as the Levine Act) prohibits city officials from participating in any proceeding involving a "license, permit, or other entitlement for use" if

the official has received a campaign contribution exceeding \$500 from a party, participant, or agent of a party or participant within the last 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html

Please see below for information about whether the recommended action for this agenda item is subject to or exempt from the Levine Act.

SUBJECT TO THE LEVINE ACT

- ☒ Land development entitlements
- ☒ Other permit, license, or entitlement for use
- ☒ Material contract modification or amendment

ALTERNATIVES

1. Do not approve the Developer and MVWSD requests to increase the maximum-income limit to 150% AMI and to extend the grace period from one year to three years.
2. Provide other direction.

PUBLIC NOTICING—Public notice and agenda posting.

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WC/1/CAM
821-06-24-25CR
205263

- Attachments:
1. Resolution
 2. Developer Request to Modify BMR Requirement for 777 West Middlefield Road
 3. MVWSD Request to Modify BMR Requirements for 777 West Middlefield Road