



Agenda Item

16-0956

Agenda Date: 2/17/2017

2017 COUNCIL STUDY ISSUE

NUMBER

CDD 17-07

TITLE

Review and Consider Increasing the Below Market Rate (BMR) Ownership Housing Requirement (Chapter 19.67 of the Municipal Code)

BACKGROUND

Lead Department: Community Development

Support Department(s): Office of the City Attorney, Office of the City Manager

Sponsor(s):

Board/Commission: Planning Commission

History:

1 year ago: N/A

2 years ago: Dropped (CDD 15-05)

SCOPE OF THE STUDY

What are the key elements of the study?

The BMR Home Ownership Program, codified in Chapter 19.67 of the Sunnyvale Municipal Code (SMC), was adopted in 1980. The program has been amended several times since 1980, with significant code amendments in 2003 and 2012, described below. Various studies and reports have been completed over the past fifteen years regarding possible changes to the BMR Program, including a nexus study in 2011 and a Housing Strategy in 2008.

This study would include:

- A survey of the BMR requirements of other cities in the area with BMR homeownership programs, the number of BMR homes they have produced cumulatively to date, and average annual production numbers, to the extent that data is available;
- An update of the 2011 BMR nexus study, with a financial feasibility analysis describing projected impacts on for-sale housing project feasibility and/or long-term production trends, if the BMR percentage requirement were increased;
- Evaluation of the existing BMR homeownership requirements;
- Information on the need for BMR homeownership units in Sunnyvale; and
- An evaluation of input from local community members and other stakeholders on the above issues.

Background

The initial BMR program required all rental and for-sale developments of ten or more units to provide

10% of the units as BMR units subject to a 20-year affordability covenant. In 2003, code amendments were enacted to drop the project size threshold to nine or more units for all projects, increase the BMR requirement to 12.5% of units in for-sale projects, and extend the affordability term to 30 years. For rental projects, the BMR requirement was increased to 15% and the affordability term extended to 55 years.

In 2012, the BMR rental requirements were changed due to the *Palmer* court decision and placed in a separate chapter of the SMC. The ownership program was modified and renumbered to SMC Chapter 19.67. Changes to the ownership requirements at that time included: dropping the project size threshold from nine to eight units, adding several alternative compliance options, updating definitions, and improving administrative and enforcement provisions. Although offered as a friendly amendment to the motion, the 2012 Council action did not include any provisions to reconsider the percentage of units required as BMR units.

A similar study issue was proposed in 2015 (CDD 15-05). That study issue proposed raising the BMR percentage requirement and/or in-lieu fee requirement. It was dropped for various reasons, primarily because the ordinance had been revised significantly in mid-2012 and the full impact of those changes could not be evaluated after so few years of development application data. In addition, each time the ordinance is revised, it requires a major commitment of time and funding, and involves some degree of legal risk.

What precipitated this study?

This study issue was raised due to concerns about insufficient affordable home buyer opportunities in the area, and whether or not the City's requirements are consistent with those of surrounding communities, such as San Jose, Mountain View, Santa Clara, etc. In addition, there were concerns that changes in market conditions over the past several years might warrant increasing the BMR percentage requirement. Affordable housing continues to be one of the most difficult challenges facing Sunnyvale and many other cities across the country. Currently in the Bay Area there is a shortage of affordable housing for residents and/or workers with lower and moderate incomes.

Planned Completion Year: 2019

FISCAL IMPACT

Cost to Conduct Study

Level of staff effort required (opportunity cost): Major

Amount of funding above current budget required: \$50,000 or more.

Funding Source: Will seek budget supplement

Explanation of Cost:

The nexus study completed in 2011 cost approximately \$30,000 for the consultant contract. That amount does not include many staff hours also spent in order to administer the contract, collect City data required by the consultant, review the report and presentation materials, complete public outreach on the study, and present the study results at several stakeholder, commission and Council meetings. In addition, outside counsel was required for specialized legal advice on housing issues, and it is anticipated that would be necessary again in order to conduct this study. Currently Housing Division workload is very high related to a number of City-subsidized affordable housing projects, a high volume of BMR home sales, new BMR

development projects, and new affordable rental units in rental projects. In addition, there is a high volume of public and Council inquiries on topics such as rent control, mobile home parks, and homelessness programs. Due to this high workload, staff would need to postpone implementation of some of the current capital projects which would add new affordable units, or use contract staff to conduct this study, which would add additional costs.

Cost to Implement Study Results

Unknown. Study would include assessment of potential costs.

Explanation of Cost:

Potential costs would be one-time costs to update program documents. Depending on the results of the study, additional on-going costs, based on the number of units subject to the program, could also be incurred.

EXPECTED PARTICIPATION IN THE PROCESS

Council-approved work plan: No

Council Study Session: No

Reviewed by Boards/Commissions: Planning, Housing and Human Services

STAFF RECOMMENDATION

Position: Defer

Explanation: There are a number of activities at the state and local levels that will affect the programs and staff efforts related to affordable housing. There is recent state legislation on accessory living units, by-right residential development and modifications to the State Density bonus regulations. The Council has adopted the Housing Element that has several actions requiring further study and there are several proposed study issues that relate to affordable housing. Staff recommends that City Council consider an overall strategy that addresses and prioritizes affordable housing efforts (this concept will be included in the strategic planning sessions in January 2017).

Staff further notes that a study of the BMR program was completed in 2011, and zoning code amendments based on that study were adopted in July 2012. Economic and housing markets, particularly in California, tend to rise and fall in approximate five-year cycles. Four years is not enough time to gather data on development trends related to the BMR program since it does not cover a full cycle (i.e., one rising and one falling market cycle). Studies of this nature are major work efforts with some legal risk that could ultimately reduce the effectiveness of the BMR program. It can be counterproductive to undertake such a major effort and related risks every several years. Further, most of the unmet demand for affordable housing is for rental housing, as many households in need of such assistance do not have the reliable income, solid credit history, and assets needed to buy a BMR home. Staff recommends deferring this study until 2021 or 2022, which would be ten years after the last amendments were adopted, and shortly before the Housing Element must be updated. Questions about the BMR requirements are often raised during public discussions held before the Housing Element update, which is intended to be a time for the City to evaluate its housing programs, policies, and community needs comprehensively. Therefore it may be preferable to update the BMR ownership program nexus study and consider possible program changes at that time, in the context of analyzing all City housing policies, programs, market trends, and local needs.

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