

Housing Commission
Meeting
April 25, 2024
Written
Communications

From: [Rhoda Fry](#)
To: [HousingCommission](#); [Alec Vybiral](#)
Subject: Request to add agenda item to 4/25/2024 meeting: Use of BMR Funds
Date: Monday, March 25, 2024 1:34:44 PM
Attachments: [BMR fund summary.pdf](#)

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Dear Housing Commission,

I am requesting that you add an agenda item to 4/25/2024 meeting: Use of BMR Funds.

If not for this meeting, then for a subsequent meeting.

The below and attached was sent this morning to the City Council and I think that it would be of interest to the Housing Commission.

If this item is not added for the 4/25/2024 meeting, then please put this information in Oral Communications.

Regards,
Rhoda Fry

From: Rhoda Fry <fryhouse@earthlink.net>

Sent: Monday, March 25, 2024 11:07 AM

To: 'City Clerk' <CityClerk@cupertino.org>; 'citycouncil@cupertino.org' <citycouncil@cupertino.org>

Subject: Oral Communications 4/3/2024 Use of BMR Funds

From: Rhoda Fry on March 25, 2024

RE: Misallocation of BMR Program Funds

Dear City Council,

As you know, on February 15, 2024, I reported to the City Attorney that our BMR Program Funds had been improperly used to pay for \$15K in stipulated judgements from the frivolous Housing Element lawsuit by YIMBY and California Housing Defense Fund. Then I discovered that the cost of litigation from the firm retained by the City, Goldfarb & Lipman, had also been misallocated along with other questionable expenses. On February 19, I wrote City Council requesting that the Accounts Payable agenda item #6 be removed from the City Council Consent Calendar for the February 21 meeting. Neither the City Manager nor the City Attorney wanted this item to be discussed in a public forum.

I am asking you to please schedule a study session in order to restore some public trust in the City's accounting system and use of BMR funds. Not only for the BMR funds but also for other special funds that are regulated under AB1600.

Below is a description of the BMR Program Rules and attached is a summary the BMR portion of Development Impact Fee Reports, which are found here:

<https://www.cupertino.org/our-city/departments/finance/budget-reports> Reviewing the fund's use over the past decade creates a number of questions about whether the BMR fund has maximized public benefits. Lately, the fund has been used for homeless, which is not an intent of the fund. The cost of administration and studies also raises concerns.

BMR Program Rules Restrict Fees to affordable housing (RESOLUTION NO. 20.055 page 4)

2.2.2 Permitted Use of Fees

A. Affordable housing mitigation fees deposited into the BMR AHF shall only be used for the provision of affordable housing in Cupertino.

B. The options for use of the fee revenue include, but are not limited to the following:

1. BMR Program Administration
2. Land Acquisition
3. New Construction
4. Acquisition and/or rehabilitation of buildings for permanent affordability
5. Preserving “at-risk” BMR Units
6. Substantial Rehabilitation
7. Rental Operating Subsidies
8. Down Payment Assistance
9. Direct gap financing
10. Fair Housing

C. A portion of the BMR AHF will be targeted to benefit the following groups, to the extent that these target populations are found, to be consistent with the needs identified in the nexus study:

1. Extremely low-income households and
2. Persons with special needs (such as the elderly, victims of domestic violence, and the disabled, including persons with developmental disabilities).



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The data below was copied from Development Impact Fee Reports from 2014 to 2023

These reports can be found here: <https://www.cupertino.org/our-city/departments/finance/budget-reports>

As there might be copying errors, please consult the source documents to confirm data

Observations:

1. funds have been used for homeless, which is not an approved category for this fund
2. Interest on these accounts has varied widely
3. 2021 - 2023 staff and admin cost has been disproportionately high as compared with services rendered
4. A significant amount of money has been used for the Housing Element, Studies, Plans, Strategies, and Surveys

USE OF BMR FUNDS 2023 - 2014 as reported in Development Impact Fee Reports

Year	2023	2022	2021	2020	2019	2018	2017	2016	2015	2014
Balance	5,462,532	6,111,827	6,551,494	6,759,440	6,902,773	10,867,642	11,336,550	11,323,869	7,699,889	699,046
Fees Collected	172,698	39,211	204,931	41,957	159,179	165,324	39,000	299,586	4,051,266	7,229,545
Interest	79,323	70,915	19,651	269,174	134,016	46,912	94,339	97,840	45,016	10,828
Staff & Admin	378,741	329,346	206,461	90,119	61,276	57,266	39,941	53,908	49,686	25,721
Legal	57,476	29,367	68,170	174,249	69,201	144,028	235,878	96,279	41,276	
Placement	265,554	264,296	259,957	190,986	190,294	137,018	123,301	125,818	71,407	127,955
Mediation	50,000	50,000	50,000	50,229	35,771	44,528	203,187	108,740	193,442	
Legal + Mediation										69,995
Housing Element										15,879
Loan						3,672,000				
Renovation					79,986	122,265				
Study				13,495					83,200	
Plan									33,291	
Strategies		7,146	44,955							
De Anza			25,000							
Survey			9,706							
Homeless	13,787	71,224								
Habitat Humanit	3,571	8,043								
Subtotal	769,123	759,421	664,249	519,078	436,528	4,177,105	602,307	384,745	472,302	239,550
End Balance	4,945,424	5,462,532	6,111,827	6,551,494	6,759,440	6,902,773	7,195,642	7,664,550	11,323,869	7,699,889

From: [Rhoda Fry](#)
To: [HousingCommission](#)
Subject: Housing Commission Oral Communications - use of BMR/Affordable Housing Fund
Date: Friday, April 19, 2024 9:43:57 AM
Attachments: [BMR fund summary 2.pdf](#)
[Attachment A Annual Report on Development Impact Fees FY 2021 pages 6 8 9.pdf](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Housing Committee,

I am writing because I am concerned about the use of the BMR/Affordable Housing Fund. This fund is funded through mitigation fees paid by developers to help make up for the need for affordable housing created by a development project. The money in this fund is precious – according to a study paid for by the City, mitigation fees don't fully pay for the problem they're intended to fix. That's another reason we need to use these funds wisely.

You may have already read that money in this fund was mis-used to pay for litigation fees and settlements of the YIMBY lawsuit, <https://sanjosespotlight.com/cupertino-spent-affordable-housing-funds-on-lawsuit/> but there's more.

In the past 3 years, the fund has been shockingly inefficient. About half of the funds expenditures have been use on City-staff/administration. And if you take into account the overhead included in the contracts that the City pays out, more than half of the money goes to administrative costs. What are we getting for our money? Is it possible that some of the Cupertino staff/admin cost should have been allocated elsewhere? Other information shows that the fund has been used for airfare, hotels, mercury news subscriptions, and membership dues to organizations that are not exclusively oriented for bmr/affordable housing. Money has also gone to homeless services, a worthy investment, but not an appropriate use of the narrowly-defined fund.

Attached you'll find a table that I put together using 10 years of data pulled from the City's annual mitigation fee report which is published annually under AB1600 (to assure proper use of developer mitigation fees). There you can glean some trends of the fund's use – and I added a chart showing how city-staff/admin compares with the rest of expenses – a worrying trend. Also attached, please find a report on the use of Palo Alto's BMR/Affordable Housing fund and you'll see that their admin costs are about a 10th of ours!

Can you please put the use of this fund on your workplan?

Can you consider reviewing the information to be put in the annual AB1600 report before it goes to Council and make any appropriate adjustments?

I also think that the AB1600 report should include the rules of the fund in order to prevent errors in its use (see below).

I'd like to see our City get the most out of our public's money and ensure that the money that was put in our hands in good-faith by developers is used appropriately and wisely.

Thanks, Rhoda Fry (408) 529-3560

265 BMR Housing Fund Definition (FY 2023-24 Adopted Budget page 100)

- **Accounts for activities related to the Below Market Rate (BMR) Housing Program.**
- **Revenues include BMR Housing Mitigation Fees collected from developers to mitigate the impact of housing needs.**
- **Monies in this fund are governed by the program's rules.**

BMR Program Rules Restrict Fees to affordable housing (RESOLUTION NO. 20.055 page 4)

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A. Affordable housing mitigation fees deposited into the BMR AHF shall only be used for the provision of affordable housing in Cupertino.

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C. A portion of the BMR AHF will be targeted to benefit the following groups, to the extent that these target populations are found, to be consistent with the needs identified in the nexus study:

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Observations 1. funds have been used for homeless, which is not an approved category for this fund. 2. Interest on these accounts varies.

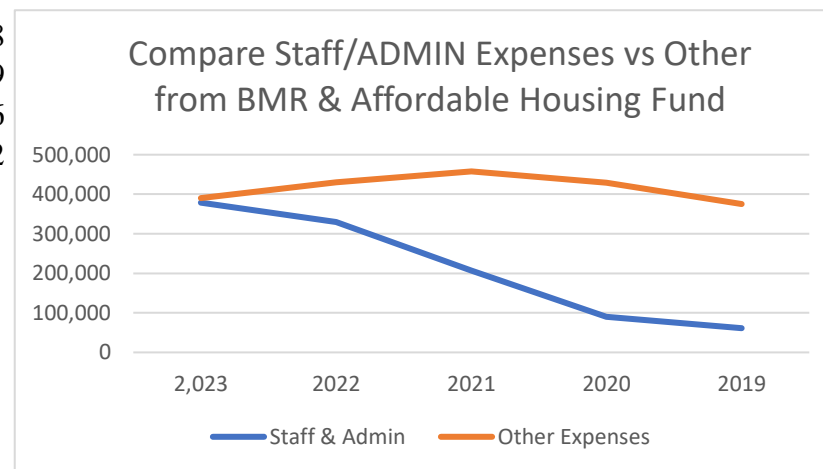
Why? Interest from loan or Chandler? 3. 2021 - 2023 staff and admin cost has been disproportionately high as compared with services rendered

4. A significant amount of money has been used for the Housing Element, Studies, Plans, Strategies, and Surveys

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Subtotal	769,123	759,421	664,249	519,078	436,528
Year	2,023	2022	2021	2020	2019
Staff & Admin	378,741	329,346	206,461	90,119	61,276
Other Expenses	390,382	430,075	457,788	428,959	375,252



Attachment A

City of Palo Alto Annual Report on Development Impact Fees for Period Ending June 30, 2021

FUND	Commercial Housing Impact Fee Fund	University Avenue Parking In-Lieu Fund
Purpose and Authority for Collection	Fees imposed on commercial and industrial development to offset the demand that new jobs create for low and moderate- income housing in the City PAMC Ch.16.65 Hotel / Retail / Other Non Residential: \$22.40 per sq. ft. Office/R&D: \$38.48 per sq. ft.	Fees collected from non-residential development within the University Ave. Parking Assessment District in lieu of providing the required number of parking spaces. PAMC Ch 16.57
Amount of the Fee		\$111,861.77 per space
Fund Balance July 1, 2020	\$25,428,649	\$6,384,494
<u>Activity in 2020-21</u>		
Revenues		
Fees Collected	606,996	-
Interest Earnings	159,746	109,638
Unrealized Gain/(Loss) Investments	(206,429)	(69,521)
Total Revenues	560,313	40,117
Expenditures		
Salaries and Benefit	(21,122)	
Liability Insurance	(621)	
Total Expenditures	(21,743)	-
Ending Balance June 30, 2021	\$25,967,219	\$6,424,611
Other Commitments/Appropriations		
Reserve for Notes Receivable include:\$1,290,000 for 2811 Alma, and \$4,137,254 for 801 Alma, \$7,700,000 for Bueva Vista Mobile Home Park. \$10,502,309 Wilton Court	(23,629,563)	
Reserve for Reappropriations	(1,167,061)	
Reserve for unrealized gain on investments	(108,891)	(94,763)
Net Funds Available	\$1,061,704	\$6,329,848
	USE OF FEES: Expenditures in Fiscal Year 2021 are \$21K for salaries and benefits. Reserve for Reappropriation is for Affordable Housing Loan Agreement: 3705 El Camino Real (Wilton Court).	USE OF FEES: No expenditures have been made from this fund in Fiscal Year 2021. FUTURE USE OF FEES: \$5.5M programmed in FY 2023 for New Downtown Parking Garage Project (PE- 15007) as part of the 2022-2026 Capital Improvement Plan (CIP).

Attachment A

City of Palo Alto Annual Report on Development Impact Fees for Period Ending June 30, 2021

FUND	Residential & Non-Residential Community Facilities Libraries	Residential Housing In-Lieu Fund
Purpose and Authority for Collection	Fees imposed on new residential and non-residential development approved after January 28, 2002 for Libraries. PAMC Ch. 16.58	Fees collected from ownership residential developments of three or more units (including mixed used with ownership in housing) in-lieu of providing the required below-market rate units(s) to low and moderate income households. PAMC Chapter 16.65
Amount of the Fee	Residential: Single family \$1,187 per residence (or \$1,766 per residence larger than 3,000 sq ft); Multi-family \$710 per unit (or \$390 per unit smaller than or equal to 900 sq ft) Nonresidential: Commercial/industrial \$299 per 1,000 sq ft or fraction thereof; Hotel/Motel \$126 per 1,000 sq ft or fraction thereof.	Single family \$82.46 per sq. ft. Single family detached; \$54.97 per sq. ft. single family attached. Multi Family \$54.97 per sq. ft. condos.
Fund Balance July 1, 2020	\$1,248,514	\$24,981,378
Activity in 2020-21		
Revenues		
Fees Collected	29,138	4,939,497
Interest Earnings	18,746	147,730
Unrealized Gain/(Loss) Investments	(15,095)	(130,549)
Total Revenues	\$32,789	\$4,956,678
Expenditures		
Salaries and Benefits		(21,122)
Contract Services		(177,888)
Liability Insurance		(621)
Operating Transfer to Capital Projects Fund	(310,000)	
Total Expenditures	(310,000)	(199,631)
Ending Balance June 30, 2021	\$971,303	\$29,738,425
Other Commitments/Appropriations		
Reserve for Encumbrances		(21,973)
Reserve for unrealized gain on investments	(16,435)	(113,952)
Reserve for Notes Receivable include \$375,000 for 3053 Emerson, \$3,504,850 for Tree House Apts, \$747,734 for Sheridan Apts., \$2,285,026 for 801 Alma, \$901,201 for Palo Alto Housing Project, \$600,000 for 2811-2825 Alma St., \$203,561 for Colorado Park Housing, \$149,968 for El Dorado Palace, and \$6,800,000 for Buena Vista Mobile Home Park, \$8,249,601 for Wilton Ct.		(23,816,941)
Net Funds Available	\$954,868	\$5,785,559

Attachment A

**City of Palo Alto
Annual Report on Development Impact Fees
for Period Ending June 30, 2021**

FUND	Residential & Non-Residential Community Facilities Libraries	Residential Housing In-Lieu Fund
	<p>USE OF FEES:</p> <p>Budget transfer \$310K in FY 2021 was made to Capital Improvement Fund Project for Library Auto Material Handling (LB-21000).</p> <p>FUTURE USE OF FEES:</p> <p>\$540K is programmed in FY 2022-2023 for LB-21000 as part of the 2022-2026 CIP. \$300K has been recommended to fund the City archives at the Roth Building (CMR 12307).</p>	<p>USE OF FEES:</p> <p>Expenditures in Fiscal Year 2021 were \$21K for salaries and benefit, \$178K for Palo Alto Housing Corp for BMR admin fees and for consultancy fees.</p>