



## COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL

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### CITY COUNCIL STAFF REPORT

Meeting: August 2, 2016

#### Subject

Propose amendments to the Policy and Procedures Manual for Administering Deed-Restricted Affordable Housing Units (the BMR Manual). The proposed changes clarify and expand procedures and requirements for (1) Section 2.2 on Conflict of Interest to exclude from purchase or rent of any BMR unit any City or consultant employees and officials who have policy-making authority or influence regarding City housing programs, participate in making decisions regarding City housing programs, administer City housing programs, or whose salary is paid in any part from a City housing program; and (2) Section 5.0 on the Appeal Process to streamline the process and to ensure that an appeal can be concluded before a BMR unit is sold.

#### Recommended Action

Adopt the draft resolution amending the Policy and Procedures Manual for Administering Deed-Restricted Affordable Housing Units (Below Market Rate (BMR) Manual).

#### Background

Under Chapter 19.172 of the Cupertino Municipal Code, the City administers a Below Market Rate Housing Program (the "BMR Program") to provide housing affordable to a broad range of households with varying income levels within the City. The City administers the BMR Program under the guidelines included in the *Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units* (the "BMR Manual"). The City contracts with West Valley Community Services ("WVCS") to manage the BMR Program, including the determination of eligibility of potential homebuyers.

The City has become aware of various issues regarding appeal procedures and conflicts of interest in relation to the BMR Program. Staff recommends that the City Council adopt the

proposed amendments shown in Attachment C to this report and discussed in detail below.

### **Recommended Changes to BMR Manual**

#### *Conflict of Interest*

The recommended changes in Section 2.2 would broaden the conflict of interest policies to exclude from purchase or rent of any BMR unit any City or consultant employees and officials who have policy-making authority or influence regarding City housing programs, participate in making decisions regarding City housing programs, administer City housing programs, or whose salary is paid in any part from a City housing program. If any employee of a consultant, such as an employee of WVCS, is on the waiting list for a particular BMR unit, all review of the application would be done by the City and not the consultant. All consultants, including WVCS, would be required to inform the City of any employee that is being considered for purchase or rent of a unit.

The adoption of the resolution would adopt the proposed amendments regarding the applicant appeal process and conflict of interest policy shown in Attachment C.

The proposed amendments to the BMR Manual were submitted to the Housing Commission at its meeting of June 23, 2016. Commissioners supported the amendments 3-0 (two members absent).

#### *Appeal Process*

WVCS administers the City's BMR Program, including marketing the BMR Program, reviewing applications for BMR units, maintaining a waiting list of qualified applicants, and reviewing applicants' incomes to determine if they are eligible to rent or purchase a BMR unit.

If applicants are dissatisfied with decisions made by WVCS, applicants may appeal the WVCS decisions. The current appeal process involves four levels of appeal at WVCS to the following individuals or groups in the following order: (1) the Associate Director, (2) the Executive Director, (3) the Board of Directors Administration Committee, and (4) the full Board of Directors. Separately, the BMR Manual provides for an appeal within 10 days to the Housing Commission, to be forwarded to the City Council for final ruling. This appeal process is lengthy and, given WVCS Board, Housing Commission, and City Council meeting schedules, can well extend for a four- to five-month period.

Under the resale restriction agreement recorded against each BMR unit, when an owner decides to sell the unit, the City has an option to purchase the unit at a restricted price. The City then assigns its option to the next qualified buyer on the waiting list. However, once the City provides notice that it is exercising its option to purchase the BMR unit, escrow on the unit must close within 90 days from the date of the City notice. The current appeal process is too long to accommodate this closing window, and any appeal cannot be finally resolved before the unit must be sold. Extending the 90-day period for closing would be inconsistent with the existing recorded agreements and would significantly disadvantage the seller. Therefore, the recommended changes would reduce the appeal process to two levels and limit the process to 60 days total for both the WVCS appeal and the City appeal. Additionally, because such appeals involve sensitive personal information regarding income, staff recommends that the appeal to the City be heard by an outside hearing officer, as is typical for most public agencies, such as housing authorities, that administer housing programs.

The recommended changes in Section 5.0 would allow an applicant 10 days to send a written appeal to WVCS, and would reduce the WVCS appeal process from four tiers to only one tier, with the Executive Director providing a decision on the appeal within 10 days from receipt of the notice from the applicant. If the applicant is dissatisfied after the WVCS appeal, the applicant then would have an additional 10 days to submit a written appeal to the City. Any appeal to the City would be heard by an outside hearing officer within 30 days from the date of receipt of the written appeal. In any decision made by WVCS, the appeal process should be clearly communicated to the applicant.

Finally, during the appeal period, the recommended changes would provide that the sale of the BMR unit could not take place pending the final resolution of the applicant's appeal. It is therefore crucial that the entire appeal process be completed in a timely manner.

The Housing Commission is currently reviewing one appeal. The revised procedures would not apply to this appeal.

#### Additional Changes Being Considered in BMR Manual

The Housing Commission, at its August 11th meeting, will review other possible changes to the BMR Manual, including the City Council's suggestion that preferences be added for teachers and other public employees. However, the amendment to the appeal procedures, in particular, is time-critical to ensure that an appeal can be concluded before a BMR unit is sold.

#### Sustainability Impact

None.

Fiscal Impact

In the event of an appeal to the City, the City would need to hire an outside hearing officer to hear the appeal.

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Reviewed by: Aarti Shrivastava, Assistant City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

A – Draft Resolution

B - Proposed amendments to the BMR Administrative Manual

C - BMR Administrative Manual redlines

D - Housing Commission Resolution No. 16-03, a Resolution of the Housing Commission of the City of Cupertino Recommending Adoption of Amendments to the Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units