



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL

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HOUSING COMMISSION STAFF REPORT

Meeting: August 11, 2016

Subject

Appeal of Kimberly Sandstrom Appeal Regarding Eligibility to Purchase BMR Unit.

Recommended Action

Staff recommends that the Housing Commission hear the appeal and move to recommend to the City Council that it affirm the determination that Kimberly Sandstrom was ineligible to purchase a BMR home because her income exceeds the established income limit, but allow her to retain her current position on the BMR waiting list.

Discussion

Pursuant to 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 using the guidelines included in the *Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units* (the "BMR Manual"), which was approved by the City Council. The City contracts with West Valley Community Services ("WVCS") to manage the BMR Program, including the determination of eligibility of potential homebuyers.

Kimberly Sandstrom has appealed the finding by WVCS that she does not qualify to purchase a moderate income level BMR unit in the City because her annual gross income exceeds the maximum allowable income for a two-person household at a moderate income level in Santa Clara County. She has thus far completed three levels of WVCS' internal grievance process, each of which affirmed the initial finding that her income exceeded the established income limit. In addition, she has attended a City Council meeting and two City Housing Commission meetings under open time, during which she objected to the finding of her ineligibility to purchase the BMR Unit, and she submitted a packet to the City Council containing materials regarding the determination of her income. At that time, the City requested outside counsel to review the income determination. They concluded that her income exceeded the income limit.

The existing WVCS grievance procedures normally would have a fourth level of review, to the WVCS Board of Directors. Ms. Sandstrom provided the City with a copy of that appeal, which revealed that the BMR unit at issue had been sold to a WVCS employee. Once the City Attorney's Office became aware of the allegation of this potential conflict of interest, the City requested that WVCS consider recusing itself such that the next level of appeal would be before the Housing Commission, which was intended to be the next stage of the appeal process in any case. In addition, the City contracted with outside counsel to perform an independent investigation of the potential conflict of interest resulting from the sale of the BMR unit to the WVCS employee. This investigation is ongoing and separate from Ms. Sandstrom's appeal. Once the investigation is completed, the City Attorney's Office will determine the appropriate course of action.

On June 23, 2016 the Housing Commission heard Ms. Sandstrom's appeal. Ms. Sandstrom presented a PowerPoint presentation requesting changes in the calculation of her income, amendments to other BMR Program policies, and various actions regarding the potential conflict of interest resulting from the sale of the unit to a WVCS employee. The Housing Commission continued its decision on the appeal until the August 11th meeting to allow for more time to properly respond to her questions and to research how other local jurisdictions calculate income.

Issues raised by Ms. Sandstrom related to BMR Program policies other than income are being addressed at this meeting in a separate agenda item regarding changes to the BMR Manual. Issues related specifically to the potential conflict of interest resulting from the sale of the BMR unit to the WVCS employee are being addressed through the independent investigation. Issues relating to the calculation of Ms. Sandstrom's income are detailed below. The Housing Commission previously recommended to the City Council that the BMR Manual be amended to strengthen the conflict of interest policies and to modify the appeal process so that it could be completed before a unit is sold. On August 2, 2016, the City Council approved these changes to the BMR Manual, with the exception of one change to the appeal process. Instead of the appeal being decided by a hearing officer at the second level, the City Council will hear the second level appeal itself. Those previously approved changes are incorporated into the BMR Manual attached as Attachment B to this report.

The Housing Commission's decision on Ms. Sandstrom's appeal is a recommendation to the City Council.

Calculation of Maximum Income

The procedures governing the City's administration of the BMR Program are contained in the BMR Manual. Section 2.4 of the BMR Manual, based on the United States Department of Housing and Urban Development ("HUD") regulations contained in 24 CFR 5.609(b), delineates the process used to determine an applicant's annual gross income. In addition to "salary and other wages", annual gross income includes "bonuses and other compensation", in accordance with 24 CFR 5.609(b). Section 2.4 of the BMR Manual is attached as Exhibit B.

The BMR Program uses income limits published by the California Department of Housing and Community Development. For a two-person household at a moderate income level in Santa Clara County, the income limit is \$102,050. Ms. Sandstrom applied for the BMR unit as a two-person household. Therefore, for Ms. Sandstrom to be eligible to purchase the BMR unit, her income cannot exceed \$102,050.

Section 2.4.1 of the BMR Manual states that, to verify the applicant's sources of income, the City may request signed copies of federal tax returns for the most recent three years, W2 forms for most recent two years, and/or copies of the last three consecutive payroll stubs or other verification of employment. The City contracts its administration of the BMR Program, including income eligibility determination, to WVCS. In Ms. Sandstrom's case, WVCS used her last three consecutive payroll stubs, which listed regular and bonus income, to determine her income eligibility. However, the bonus income at issue and discussed below would also have been shown on her W2 form and 2015 tax return, which may not have been available when she applied in February 2016.

Calculation of Income

The three payroll stubs provided by Ms. Sandstrom display gross wages in the amount of \$3,692.80 paid biweekly. Therefore, to determine her gross annual wages, \$3,692.80 is multiplied by 26 pay periods for a total of \$96,012.80 per year. Since bonuses are also included in the calculation, as provided in the BMR Manual and 24 CFR 5.609(b), the bonus pay would be added in the total amount of \$7,635.34, of which \$5,850 was a performance bonus. The total of Ms. Sandstrom's annual gross wages plus the total bonuses received is \$103,648.14, which exceeds the income limit of \$102,050 for a two-person household at a moderate income level in Santa Clara County. Therefore, Ms. Sandstrom's annual gross income is over the maximum permitted to be entitled to purchase the BMR Unit.

The crux of Ms. Sandstrom's argument regarding her income eligibility is that the determination should be forward-looking under 24 CFR 5.609(a)(2), which states that annual income includes all amounts which "[a]re anticipated to be received from a

source outside the family during the 12-month period following admission or annual reexamination effective date." The City's BMR Manual at the time of her application excluded subsection (a) from its definition of annual income; it only referenced subsections (b) and (c). The Manual explicitly states that income is determined through past evidence of income (i.e. tax returns, W2 forms, and paystubs) and, as provided by 24 CFR 5.609(b), bonuses received during the years covered by those documents are part of the income calculation.

However, using subsection (a) of this statute does not change the calculation. The income calculation is forward-looking, whether using subsection (a) or only subsections (b) and (c), in that the calculation uses past income data to project future income. This form of forward-looking projection using documentation of past income is uniformly used in both federal and local housing programs, as discussed below. In general, this use of past income is not adjusted unless there is firm documentation available to reflect changes in future income, such as a major life change since the last year (i.e. job loss or demotion, retirement, or disability).

The issue in this appeal is solely the extent to which past bonuses should be used to calculate current income. Ms. Sandstrom has provided evidence of a lower mid-year bonus in 2016 than she received in 2015 and evidence of her company's declining stock prices to show that her total bonuses will substantially decline this year.

However, stock prices can fluctuate greatly in any given year, and performance during the preceding few months is not an indication of future stock performance. As shown in her presentation given at the June 23rd Housing Commission meeting, Ms. Sandstrom's total bonuses have fluctuated over the past three years, but actually increased in 2015. Her bonuses in 2013 totaled \$8,100; in 2014 totaled \$6,150; and in 2015 totaled \$7,635.34. The average of the past three years' bonuses is \$7,295. Given bonus fluctuations in past years, it would be speculative to estimate the totality of potential yearly bonuses from one mid-year bonus. Using the average bonus from the last 3 years, her income would still exceed the BMR limit. \$7,295 (the average bonus) plus \$96,012.80 (her base salary) equals \$103,307.80, which exceeds the income limit of \$102,050.00 for a two-person household at a moderate income level in Santa Clara County.

Income Calculations Used in Other Jurisdictions

The income calculations used by the City are consistent with those used in other jurisdictions. To research income calculations used in other jurisdictions, the City reviewed the BMR programs in other jurisdictions and those administered by BMR program consultants, including the City of Sunnyvale, Alameda County, the City of

Emeryville, Palo Alto Housing Corporation, and Housing Trust Silicon Valley. Ms. Sandstrom had asked the City to consider using the City of Sunnyvale's policies.

Sunnyvale's standards for calculating income are essentially the same as Cupertino's. Sunnyvale follows the Technical Guide for Determining Income and Allowances for the HOME Program (a guide published by HUD) (the "HOME Guide") and 24 CFR 5.609 (referred to as the "Part 5" method), the same statute used by the City for its income calculations, to determine gross household income of their applicants. Under Part 5 and the HOME Guide, bonuses are explicitly included as income. The HOME Guide explains in its section entitled "Anticipating Income" that to calculate an applicant's income, the public agency "must project a household's income in the future. To do so, a 'snapshot' of the household's current circumstances is used to project future income. In general, a [public agency] should assume that today's circumstances will continue for the next 12 months, unless there is verifiable evidence to the contrary." This is entirely consistent with the City's method of calculating income. The City uses an applicant household's current earnings from the past year to project the household's future income. Further, the HOME Guide goes on to specify that "[t]his method should be used even when it is not clear that the type of income received currently will continue in the coming year." For the entire excerpt from the HOME Guide, please see Exhibit E to this staff report. Other jurisdictions, including those that use Neighborhood Stabilization Program homebuyer funds, also use the HOME Guide to calculate applicant incomes for their programs.

Staff recommends that the City adopt the use of the HOME Guide for its BMR Manual. Though it does not change the method of income calculation, adoption of the HOME Guide would provide further clarity for applicants and WVCS and provides helpful examples of income calculations. Also, for further clarity and conformity with other jurisdictions, staff recommends that 24 CFR 5.609(a) be added to the Manual as well.

Other Recommended Changes in BMR Manual Regarding Income Verification

At the last Housing Commission meeting, staff recommended additional changes in the BMR Manual to ensure that the same sources of income verification were used for all applicants.

Staff recommends that a tax return for the last year (or, if unavailable, the previous year's tax return plus other evidence, such as W2 forms and 1099s, showing the applicant's total income for the last year), the applicant's three most recent paystubs, and bank statements for the last two months be used for all applicants. The tax return or equivalent information will be the primary document used to determine the applicant's annual gross income. The pay stubs will be used to confirm the applicant's employment

status and to confirm that the applicant's life circumstances and income have not changed significantly since the last-filed tax return. The bank statements will be used to verify that the applicant currently has enough assets for the down payment and closing costs for the BMR unit, but does not possess assets in excess of the limit of \$100,000. The specific changes proposed in the BMR Manual are attached to the next agenda item.

Conclusions

Staff recognizes how close Ms. Sandstrom was to income qualifying for a BMR unit. In addition, her appeal could not be completed prior to the sale of the BMR unit. Therefore, in recognition of these factors, staff recommends that Ms. Sandstrom maintain her position on the BMR Program waiting list. (The BMR Manual changes addressed in the next agenda item recommend additional changes relating to the waiting list.)

It is important that WVCS have clear guidance as to how to calculate income. Given the critical housing shortage in Cupertino, and varying incomes in the "gig economy", it can be expected that the issue of projecting income forward will arise repeatedly. The HOME Guide provides the best guidance available.

Sustainability Impact

None

Fiscal Impact

None

Prepared by: Benjamin Fu, Assistant Director of Community Development

Approved for submission by: Aarti Shrivastava, Assistant City Manager

Attachments:

A - Resolution No. 16 - ____ Regarding the Appeal of Ms. Kimberly Sandstrom

B - BMR Administrative Manual (excerpts regarding income calculation)

C - Referenced Regulations (24 CFR 5.609)

D - Letters of Appeal and Decisions and Other Documentation Provided by Kimberly Sandstrom

E - Technical Guide for Determining Income and Allowances for the HOME Program (excerpts regarding income calculations)

RESOLUTION NO. 16-

**A RESOLUTION OF THE HOUSING COMMISSION OF THE CITY OF
CUPERTINO REGARDING THE APPEAL OF MS. KIMBERLY SANDSTROM**

WHEREAS, the City of Cupertino (the "City") administers a Below Market-Rate (BMR) housing program; and

WHEREAS, the City contracts with West Valley Community Services ("WVCS") to manage the BMR program, including the determination of eligibility of potential applicants;

WHEREAS, the *Policy and Procedures Manual for Administering Deed-Restricted Affordable Housing Units* (the "BMR Manual"), adopted by the City Council, serves as the day-to-day operational manual for both City staff and WVCS in administering the BMR program; and

WHEREAS, applicants who desire to rent or purchase a BMR unit in the City must complete an application demonstrating that the applicant's annual gross income does not exceed the maximum published limit for the BMR unit; and

WHEREAS, WVCS maintains a waiting list of qualified applicants who wish to rent or purchase a BMR unit; and

WHEREAS, Kimberly Sandstrom applied to purchase a BMR unit that became available; and

WHEREAS, based on the BMR Manual, WVCS determined that Ms. Sandstrom's annual gross income exceeded the established income limit to purchase the BMR unit; and

WHEREAS, Ms. Sandstrom has completed three levels of appeal at WVCS; and

WHEREAS, Ms. Sandstrom has further appealed to the Housing Commission, which will make a recommendation to the City Council for the final decision.

NOW, THEREFORE, BE IT RESOLVED, after careful consideration of the facts, exhibits, staff report, testimony and other evidence submitted in this matter, that the Housing Commission recommends that the City Council affirm the determination that Kimberly Sandstrom was ineligible to purchase a BMR unit because her income

exceeds the established income limit, as calculated consistent with the BMR Manual in effect at the time of the determination of her income; and

BE IT FURTHER RESOLVED that, because the appeal procedures then in place did not allow Ms. Sandstrom to complete her appeal before the affected BMR unit was sold, the Housing Commission further recommends that the City Council permit Ms. Sandstrom to retain her current position on the BMR waiting list.

PASSED AND ADOPTED this 11th day of August 2016 at a regular meeting of the Housing Commission of the City of Cupertino by the following roll call vote:

Vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Aarti Shrivastava, Assistant City Manager

Harvey Barnett, Chair,
Housing Commission

**Excerpts Regarding Income Calculation - Policy and Procedures Manual for
Administering Deed Restricted Affordable Housing Units**

2.4 Annual Gross Income

Annual household income is defined pursuant to the U.S. Code of Federal Regulations and provided on the website of the U.S. Department of Housing and Urban Development at:

<http://www.hud.gov/offices/cpd/affordablehousing/training/web/calculator/definitions/part5.cfm>

Exhibit 3 provides the definitions of what is included and excluded from the determination of annual gross income in accordance with the U.S. Code of Regulations. In summary, gross household income is the sum of all the income for every adult, 18 years or older, living in the unit. Sources of income include all wages or salaries, overtime pay, commissions, fees, tips, bonuses and other compensation, net income from a business or profession or from the rental of real or personal property, interest and dividends, payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, payments in lieu of earnings, public assistance, alimony and child support received, and any other sources of income.

2.4.1. Documentation to Verify Sources of Income

The gross annual incomes of all household members age 18 or older are considered when determining eligibility. The types of income to be verified and the type of documentation that will be requested may include:

- Signed copies of federal tax returns for the most recent three years
- W2 form for most recent two years
- Copies of the last three consecutive payroll stubs or other verification of employment

The following income documentation below may also be verified as follows:

Source of Income	Documentation
Salaries and wages	Prior three years federal tax returns, two years W2, three most recent payroll stubs
Business income	Prior three years federal tax returns and verification of income by a certified public accountant or bookkeeper including a most recent quarterly profit/loss statement
Interest and dividend income	Prior three years federal tax returns
Retirement and Insurance Income	Verification from source
Unemployment & Disability Income	Verification from source
Welfare Assistance	Verification from source
Alimony, Child Support and Gift Income	Verification from source
Armed Forces Income	Verification from source
Other	Verification from source

Referenced Regulations (24 CFR 5.609(b) and (c))

Code of Federal Regulations > TITLE 24 -- HOUSING AND URBAN DEVELOPMENT > SUBTITLE A -- OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT > PART 5 -- GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS > SUBPART F -- SECTION 8 AND PUBLIC HOUSING, AND OTHER HUD ASSISTED HOUSING SERVING PERSONS WITH DISABILITIES: FAMILY INCOME AND FAMILY PAYMENT; OCCUPANCY REQUIREMENTS FOR SECTION 8 PROJECT-BASED ASSISTANCE > FAMILY INCOME

§ 5.609 Annual income.

(b) Annual income includes, but is not limited to:

(1)The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

(2)The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3)Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$ 5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4)The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments. (i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at [45 CFR 260.31](#); and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section).

(9) For section 8 programs only and as provided in [24 CFR 5.612](#), any financial assistance, in excess of amounts received for tuition and any other required fees and charges, that an individual receives under the Higher Education Act of 1965 ([20 U.S.C. 1001](#) et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 ([20 U.S.C. 1002](#))), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

- (5)Income of a live-in aide, as defined in § 5.403;
- (6)Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7)The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8)
 - (i)Amounts received under training programs funded by HUD;
 - (ii)Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
 - (iii)Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 - (iv)Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$ 200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
 - (v)Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9)Temporary, nonrecurring or sporadic income (including gifts);
- (10)Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (11)Earnings in excess of \$ 480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12)Adoption assistance payments in excess of \$ 480 per adopted child;
- (13)[Reserved]
- (14)Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in [24 CFR 5.609\(c\)](#) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary.

