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DATE: October 5, 2023

## STUDY SESSION STAFF REPORT

AGENDA ITEM NO. 9.1

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TO: FOSTER CITY PLANNING COMMISSION

PREPARED BY: NORI JABBA, HOUSING COORDINATOR  
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CASE NO.: RZ2023-0008

PROJECT LOCATION: CITYWIDE

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### **REQUESTED ACTION/PURPOSE**

The purpose of this Study Session is to provide the Planning Commission and the public with an opportunity to review the proposed amendments to the Municipal Code Chapter 17.90 Below Market Rate Inclusionary Housing Program and Below Market Rate (BMR) guidelines. Staff recommends that the Planning Commission provide feedback and guidance to staff on updates to Chapter 17.90 of the Foster City Municipal Code, Below Market Rate Inclusionary Housing Program.

### **BACKGROUND**

On March 21, 2022, the City Council adopted Ordinance 644 establishing Chapter 17.90 to Title 17, Zoning, of the Foster City Municipal Code ([see link to the meeting agenda, item 6.2](#)) to implement the inclusionary policy that provides that 20% of all units, excluding bonus units, in residential projects be affordable in order to meet the City's regional share of very low-, low- and moderate-income housing needs and the needs of special groups, including the elderly, disabled, small and large families, and local workers.

Chapter 17.90 Below Market Rate Inclusionary Housing Program focuses on the development of the BMR units, including the required number of BMR units; level of affordability for rental and ownership projects; payment of BMR in-lieu fee; standards for new BMR units; BMR housing plan and agreement; alternatives to BMR requirements; waiver of BMR requirements; affordable housing fund; and enforcement.

In recent months, the CDD staff reviewed Chapter 17.90 and the related documents, including the BMR Guidelines, and determined that the implementation and enforcement of existing BMR programs could be improved with revisions to Chapter 17.90 of the Municipal Code to clarify certain terms, and adoption of comprehensive BMR Guidelines to provide clarity to landlords and tenants BMR unit administration practices to better support the City's anti-displacement and further fair housing strategies.

### **STUDY SESSION PUBLIC NOTICING**

The public was advised of this Study Session in the following ways:

- Published 1/4 page ad in the Islander on September 20, 2023
- Foster City TV Channel 27 on September 21, 2023 through October 5, 2023
- Foster City web site: [www.fostercity.org](http://www.fostercity.org) on September 12, 2023
- Public Posting Locations on September 13, 2023
- Electronic marquee at Leo Ryan Park through September 21, 2023 through October 5, 2023
- Email Notification to listservs on September 12, 2023

## **ANALYSIS**

The Community Development Department (CDD) oversees Affordable Housing programs, including Deed Restricted Ownership Units, Below Market Rate (BMR) program, Existing Unit Purchase Program, HIP Home Sharing Program, and Housing Rehabilitation Loan Program.

### **BMR Program**

The BMR program covers all rental and ownership properties subject to an affordable housing deed restriction or agreement that restricts units to extremely low, very low, moderate, or workforce units. The responsibilities pertaining to overseeing and monitoring existing BMR programs are aligned with existing property covenants and agreements. The City ensures compliance with terms of the affordability agreement, the Municipal Code, Chapter 17.90, Below Market Rate Inclusionary Housing Program, and consistency in methodologies for eligibility of below market rate households to ensure compliance with the City's inclusionary housing program. In addition to reviewing annual reports submitted by property managers, the staff assists property managers in applying the BMR Administrative Procedures and Guidelines ("BMR Guidelines") and assists tenants in navigating BMR requirements as appropriate.

To assist with these responsibilities, the BMR Administrative Procedures and Guidelines ("BMR Guidelines") were created in 2010, and minor revisions were made in 2011, 2016, and 2020. Furthermore, on [March 21, 2022](#) (first reading on [March 7, 2022](#)), City Council further adopted an Ordinance of the City of Foster City, adding a new Chapter 17.90, Below Market Rate Inclusionary Housing Program [Chapter 17.90, Below Market Rate Inclusionary Housing Program](#), to Title 17, Zoning, of the Foster City Municipal Code (Ordinance No. 644) to formalize it into the Municipal Code.

Staff monitors and ensures compliance of BMR rental, senior rental, workforce, and ownership properties, as described below.

### **BMR Property Summary**

The BMR Guidelines cover all rental and ownership properties subject to a Property Covenant or Agreement that restricts units to extremely low, very low, moderate, or workforce income or rent limits, including the following properties:

#### **Senior Rental**

1. Alma Point (65 senior rental units)
2. Metro Center Senior Apartments (60 senior rental units)

#### **BMR Rental**

3. Foster's Landing (BMR covenants expire December 31, 2023) (4 remaining rental units)
4. Marlin Cove (84 rental units)
5. Miramar Apartments (48 rental units)
6. One Hundred Grand (33 rental units)
7. The Pilgrim Workforce Housing (22 rental property units, owned by the City)
8. The Plaza (60 rental units)
9. The Triton (48 rental units)
10. The Existing Unit Purchase Program homes (rental properties owned by the City): six (6) individual homes and duplexes categorized as one (1) property; in various locations.

#### Ownership

11. Emerald Bay BMR homes (ownership): seven (7) low and very low ownership properties in the Emerald Bay neighborhood that were sold to income-qualified buyers in the early 1990s.

The properties named above provide 437 BMR units for the City of Foster City. The City's Regional Housing Needs Allocation (RHNA) calls for the addition of 1,896 new housing units from 2023-2031, comprised of 1,119 below market rate units and 777 above-moderate rate units. With the RHNA Targets and the State's high priority and new legislation to encourage housing production, the City's number of BMR units are set to increase.

#### BMR Property Restrictions

Each BMR property is subject to its own property covenant and deed restriction.

BMR Rental: The covenants for rental properties stipulate how many units in the development must be income and or rent-restricted, affordability designations, occupancy standards, how affordable rents are determined, annual reporting requirements, preferences, income restrictions, annual income recertification requirements, and other requirements. The covenants also reference sections in the California Health and Safety Code and California Code of Regulations, Title 25, for determining affordability, occupancy standards, income, and affordable rent. In addition, some of the properties are also covered by Low-Income Housing Tax Credits (LIHTC) or Bond Agreements.

BMR Ownership: The owner-occupied properties each include a deed restriction that requires the initial owners to meet restrictions for the specified income levels and maintain the property as the owner's sole and primary residence. During the deed-restricted period, if the property is sold, it must be sold at a below-market price and to an income-qualified household. After the expiration of the deed restriction, owners may choose to sell the property at market rates. The Emerald Bay deed restrictions provide that the City of Foster City receives a portion of the proceeds of the first sale after the expiration of the restrictions. The Emerald Bay deed restrictions expire in November 2026. The Existing Unit Purchase properties, owned by the City, are deed-restricted for rental to very low- and low-income households, consistent with the BMR rental properties.

For future BMR ownership properties, Chapter 17.90 provides that the deed restriction will have a term of at least 45 years and that the 45-year term shall start over with each resale. If a below-market rate dwelling unit has not been sold or resold prior to the expiration of the 45-year term, then upon the expiration of the 45-year term, the restrictions set forth in the below-market rate

housing agreement shall terminate, expire, and be of no further force or effect and the dwelling unit may then be sold at market rate.

With the 6th cycle of the Housing Element, staff anticipates substantial growth in the number of BMR units and properties in the City. The current chapter of the Municipal Code mainly focuses on the development of BMR units. The proposed revisions aim to add clear provisions for ongoing management of BMR units through updated BMR Guidelines. These revisions are necessary to ensure consistency in BMR management practices and owners' compliance with City requirements, deed restrictions, and regulatory documents. Furthermore, the updated BMR Guidelines aim to provide more precise guidance and direction to staff, BMR rental property managers, and BMR housing developers regarding compliance; to ensure consistency in compliance practices; to clarify protocols for non-compliance and enforcement; and to ensure compliance with all applicable laws.

Staff divided the existing BMR Guidelines (Attachment 5) into (i) ownership and (ii) rental property documents due to the differences between the two (2) programs (see attachments 3 and 4).

### Revisions to Municipal Code

The proposed revisions to Chapter 17.90 include additional definitions of terms, updates to code references, clarity on the use of compliance and monitoring fees, formatting updates to improve clarity, the addition of a new section for standards for occupancy, management, and compliance of below market rate dwelling units, and the inclusion of enforcement of the BMR Guidelines, enforcement methodology, and other clarifying revisions.

Proposed revisions to Chapter 17.90 include:

- **Section 17.90.010 Purpose:** Addition of *"extremely low-income households"* to City's regional share in Section 17.90.010.B, to mirror the language used in the 6<sup>th</sup> cycle Housing Element. Included language in the section 17.90.010.F to apply the provisions of the chapter to *'existing and proposed providing program management, maintenance, and compliance standards and guidelines for eligibility and occupancy of below market rate units.'*
- **Section 17.90.020 Definitions:** Addition of six (6) new definitions, including: (i) *administration and compliance monitoring cost*, (ii) *"director"*, (iii) *development applicant*, (iv) *"household"*, (iv) *housing applicant*, and (vi) *workforce housing*. These additional definitions provide clarity for the terms used in the chapter. In addition, staff made minor revisions to the language of a few definitions.
- **Section 17.90.030 Applicability:** Formatting changes and other minor revisions.
- **Section 17.90.040 Requirements for inclusion of below market rate dwelling units:** Formatting changes and other minor revisions, including moving items relating to standards for management of units to a new section, 17.90.110.
- **Section 17.90.050 Payment of below market rate housing in-lieu fee:** Formatting, updated references, and other minor changes and other revisions.
- **Section 17.90.060 Standards for development of below market rate dwelling units:** Formatting changes, minor change in title for clarity; moved sections relating to management and compliance of below market rate units from this section to a new Section 17.90.110 to differentiate between development of units and management of units; and other minor revisions.

- **Section 17.90.070 Below market rate housing plan and below market rate housing agreement:** Formatting and other minor revisions. Also added provision relating to requirement of replacement units per Municipal Code Chapter 17.55.
- **Section 17.90.080 Alternatives:** Formatting and other minor revisions.
- **Section 17.90.090 Waiver of requirements:** The Section has been removed since there is a provision for exemptions under section 17.90.303.C.
- **Section 17.90.100 Affordable Housing Fund** is now renumbered to Section 17.90.090 and there are no changes.
- **Section 17.90.100 Standards for occupancy, management, and compliance of below market rate housing units:** We created this new section, which is comprised of existing standards for occupancy, management, and compliance of below market rate housing from Section 17.90.060 to this new section to differentiate between standards for development of below market rate units and standards for managing market rate units. We also updated the language regarding below market rate housing administrative standards and guidelines to include additional items covered by the
- **Section 17.90.120 Enforcement:** clarification of the Enforcement section of the Chapter to include BMR Guidelines and to enable staff to enforce rules and requirements for management and compliance of BMR units, especially as best practices continue to evolve in this area. This change is necessary to ensure consistency in income certification methodologies and the city's anti-displacement strategies. This section was also renumbered to accommodate the new Section 17.90.110.

The revisions to Chapter 17.90, Below Market Rate Inclusionary Housing Program will facilitate more effective BMR program management in the following ways:

- Clarify the purpose, scope, and definitions of the BMR Program.
- Position staff to better monitor BMR units and ensure compliance with the City's BMR program.
- Ensure consistency and enforcement of Chapter 17.90.
- Clarify enforcement of the City's BMR Guidelines.

The projected outcome of this round of revisions is more effective and consistent monitoring of the BMR properties, an improved resource for property managers for instructions and best practices, a reduction in risk of non-compliance, and a clear process for addressing non-compliance in the event that non-compliance does occur.

## **SUMMARY**

Staff recommends revisions to Chapter 17.90 to expand management, compliance and enforcement provisions to enable staff to effectively manage existing BMR programs and anticipated growth of the Below Market Rate Housing inclusionary program. In addition, the proposed updates to BMR Guidelines will provide clearer guidance and direction to staff, BMR rental property managers, and BMR housing developers regarding compliance to ensure consistency in compliance practices and clarify protocols for non-compliance and enforcement.

## **ENVIRONMENTAL**

This study session is exempt per CEQA Guidelines Section 15061(b)(3), as there are no physical changes associated with this action.

## **NEXT STEPS**

The next steps are:

- October 2023: Planning Commission Public Hearing
- November 2023: City Council Public Hearing

## **ATTACHMENTS**

Attachment 1 – Draft Revised Foster City Municipal Code, Chapter 17.90, Redline

Attachment 2 – Draft Revised Foster City Municipal Code, Chapter 17.90, Clean

Attachment 3 – Draft Revised BMR Rental Housing Program Administrative Procedures and Guidelines

Attachment 4 – Draft Revised BMR Ownership Housing Programs Administrative Procedures and Guidelines

Attachment 5 – BMR Administrative Procedures and Guidelines, March 19, 2020