
DATE: October 19, 2023

STAFF REPORT

AGENDA ITEM NO. 6.2

TO: FOSTER CITY PLANNING COMMISSION

PREPARED BY: NORI JABBA, HOUSING COORDINATOR

CASE NO.: RZ2023-0008

PROJECT LOCATION: CITYWIDE

REQUESTED ACTION/PURPOSE

Adopt Resolution (Attachment 1) recommending that the City Council adopt the Ordinance amending Title 17, "Zoning" proposed amendments to the Municipal Code Chapter 17.90 Below Market Rate Inclusionary Housing Program and Below Market Rate (BMR) guidelines and finding the amendments exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3).

NOTICING/PUBLIC OUTREACH

Notice of the October 19, 2023, Planning Commission Public Hearing, was noticed in the following ways:

- Published in the Foster City Islander on October 4, 2023
- Posted on the Foster City Website: www.fostercity.org on September 28, 2023
- Displayed on Foster City TV Channel 27 on October 5, 2023, through October 19, 2023
- Electronic Marquee Sign in Leo Ryan Park on October 5, 2023, through October 19, 2023
- Email Notification to listserves on September 28, 2023
- Posted on-site and at all the City's official posting locations on October 2, 2023

BACKGROUND

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 the existing BMR programs could be improved with revisions to the Chapter 17.90 of the Municipal Code and BMR guidelines.

On October 5, 2023, a Study Session was held to discuss the City's affordable housing programs and proposed amendments to Chapter 17.90 and BMR guidelines. Staff provided an overview of the BMR housing programs, explained the need for revisions and outlined the proposed

amendments to Chapter 17.90 and BMR guidelines ([see link to the meeting for details](#)). At the meeting, one of the Commissioners suggested adding language for expiring covenants to include that the City Council will engage with the property owner(s) to determine the feasibility of extending the covenants (see Attachment 6 for draft meeting minutes). Staff has included the language regarding expiring covenants in Section 17.90.120.

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.

Overview of 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.

Staff monitors and ensures compliance for approximately 437 BMR units comprising of rental, senior rental, workforce, and ownership properties. Chapter 17.90 Below Market Rate Inclusionary Housing Program mainly focuses on the development of the BMR units and staff determined that the responsibilities pertaining to overseeing and monitoring of the existing BMR programs could be further improved with the proposed revisions to the Chapter 17.90.

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 6th 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 17.90.110 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. This section is now renumbered to Section 17.90.100.
- **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.
- **Section 17.90.120 Expiring Covenants:** Language added to require that five (5) years prior to expiration of an affordability restriction, the Director or designee shall present a report to the City Council informing them about the expiration and will commence discussions with the property owner(s) to determine the feasibility of extending or prolonging affordability restrictions on the property.

See Attachment 2 for the redline version showing the proposed amendments to Chapter 17.90.

Revisions to BMR Guidelines

In order to assist with responsibilities of overseeing and monitoring existing BMR programs, the BMR Administrative Procedures and Guidelines ("BMR Guidelines") were created in 2010, and minor revisions were made in 2011, 2016, and 2020.

For effective implementation of the BMR guidelines, staff divided the existing guidelines into (i) ownership and (ii) rental property documents due to the differences between the two (2) programs. Additionally, a table of contents, detailed instructions and guidance, more references, and enforcement provisions were added. These enhancements aim to ensure consistent management practices, offer clear guidance, support the Housing Element and anti-displacement

strategies, and reduce the risk of non-compliance. Following is a brief summary of two (2) BMR guidelines documents, including:

- BMR Rental Guidelines (Attachment 4): This document includes requirements, standards, procedures, best practices, and recommendations for below market rate unit compliance, waitlist management, marketing plans for initial lease-ups, tenant eligibility, occupancy standards, determination of income and rent, annual income recertifications, annual reports, training for property managers, and other critical elements of compliance for below market rate units. The BMR Guidelines are the primary resource for property managers to implement the terms of the regulatory agreements.
- BMR Ownership Guidelines (Attachment 5): This document includes requirements, procedures and best practices for City Staff to determine purchaser eligibility for initial sale and rules for sale of the property during and after the deed restriction period. The BMR Ownership Guidelines are an important resource for City staff to ensure compliance of owner-occupied BMR units with regulatory agreements.

The revisions to Chapter 17.90, Below Market Rate Inclusionary Housing Program and BMR guidelines 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.

SUMMARY

Staff recommends that Planning Commission approve attached Resolution (Attachment 1) recommending City Council adopt Ordinance amending Title 17, "Zoning" proposed amendments to the Municipal Code Chapter 17.90 Below Market Rate Inclusionary Housing Program and Below Market Rate (BMR) guidelines and finding the amendments exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3).

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 proposed text amendments will be forwarded to the City Council for consideration at a noticed Public Hearing.

ATTACHMENTS

Attachment 1 – Planning Commission Resolution for Chapter 17.90

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

Attachment 3 – Draft City Council Ordinance for Foster City Municipal Code, Chapter 17.90

Attachment 4 – Draft Revised BMR Rental Housing Program Administrative Procedures and Guidelines

Attachment 5 – Draft Revised BMR Ownership Housing Programs Administrative Procedures and Guidelines

Attachment 6 – Draft Planning Commission meeting minutes dated October 05, 2023