



Legislation Details (With Text)

File #: 2021-1179

Type: Consent Calendar Item **Status:** Agenda Ready

File created: 10/11/2021 **In control:** Community Development Commission

On agenda: 12/7/2021 **Final action:**

Title: Process Improvements as to the Community Development Commission's Monitoring Program for Affordable Housing Projects and Units; Fee Studies

Sponsors: Community Development Commission

Indexes:

Attachments: 1. Summary Report, 2. Attachment 1 - Existing Procedures Manual (not amended at this time), with Exhibits

| Date | Ver. | Action By | Action | Result |
|-----------|------|----------------------|-------------------------|--------|
| 12/7/2021 | 1 | Board of Supervisors | Approved as recommended | Pass |

To: County of Sonoma Board of Supervisors and Board of Commissioners of the Community Development Commission

Department or Agency Name(s): Community Development Commission

Staff Name and Phone Number: Dave Kiff, Interim Executive Director, 707-565-7504

Vote Requirement: Majority

Supervisory District(s): Countywide

Title:

Process Improvements as to the Community Development Commission's Monitoring Program for Affordable Housing Projects and Units; Fee Studies

Recommended Action:

- Receive report and direct staff to revise the CDC's Affordable Housing Monitoring Procedures Manual as recommended in this staff report (regular once-every-three years onsite monitoring, routine submission of backup materials for properties not visited, and a Wait List review).
- Authorize staff to complete a cost-of-services study to update and re-establish an appropriate per unit monitoring fee (with a cost of living adjustment) for affordable housing units.
- Authorize staff to complete a study associated with "tiering" affordable housing in-lieu or impact development fees.

Executive Summary:

Residential developments that receive public subsidies, or that are mandated by law to be affordable for households at specific income levels, are restricted with income caps that determine occupant eligibility, and rental or purchase price limits that ensure affordability. In Sonoma County, these affordable units are produced in a variety of ways that can include: (1) financial assistance through the Community Development Commission (Commission); (2) a County regulatory incentive such as a density bonus; or (3) a County inclusionary or workforce housing requirement. The units are typically restricted through a regulatory agreement (such as an Affordable Housing Agreement), State tax credit use restrictions, or a local land use covenant that requires the unit(s) to be affordable to extremely low, very low, low, or moderate-income households.

The Community Development Commission (“Commission”) monitors and enforces compliance of and with restricted affordable housing units, both rental and ownership. In August 2021, the Commission reviewed its procedures to monitor affordable housing projects’ compliance with affordability restrictions. The process involves a review of annual self-certified compliance reports. These reports typically include information as to how each resident in an income-restricted unit qualifies to remain in the unit as well as on-site visits to directly review files. In some cases, the review is more intensive and CDC staff visits developments to review income verifications on site. In other cases, the review involves looking at the self-certification statements to check that individuals’ stated income levels are at or below requirements.

Although the Commission’s review process is effective, it can be improved. This Board Report:

- Recommends at least three proposed changes staff intends to implement; and
- Requests authorization to update the fees we charge to cover the costs of monitoring compliance. This may be done via an in-house cost-of-services study.

Lastly, the Board of Supervisors in 2020 discussed whether the impact or in-lieu fees that are collected on market-rate projects and then placed into the County Fund for Housing (CFH) for distribution to affordable housing projects could be re-analyzed as they relate to the size of each market-rate unit. This Board item would authorize this analysis or study.

Discussion:

The Commission monitors and enforces compliance of and with restricted affordable housing units, both rental and ownership. These affordable units are produced in a variety of ways that can include a Commission loan, a County inclusionary housing requirement, or a County development incentive. They are often restricted through a local regulatory agreement (such as an Affordable Housing Agreement), State tax credit use restrictions, or a local land use covenant that requires the unit(s) to be affordable to extremely low, very low, low, or moderate-income households.

The restricted affordable housing inventory under the Commission’s review is 3,183 units (consisting of 2,790 rental units and 393 ownership units across 150 separate properties). There are other units in Sonoma County that cities and/or State agencies monitor for similar compliance. Table 1 shows more detail about the income-restricted units, including those now in development.

Table 1

| Type | Extremely Low Income (<30% AMI) | Very Low Income (<50% AMI) | Low Income (<80% AMI) | Moderate Income (<120% AMI) | Total by Type (Rental/Ownership) |
|--------------------------------------|---------------------------------|----------------------------|-----------------------|-----------------------------|----------------------------------|
| <i>Currently In Operation</i> | | | | | |
| <i>Rental</i> | 135 | 1366 | 1215 | 74 | 2790 |
| <i>Ownership</i> | 0 | 48 | 345 | 0 | 393 |
| Current Total | 135 | 1414 | 1560 | 74 | 3183 |
| <i>Under Development</i> | | | | | |
| <i>Rental</i> | 143 | 90 | 143 | 0 | 376 |
| <i>Ownership</i> | 0 | 0 | 64 | 31 | 95 |
| Total | 143 | 90 | 207 | 31 | 471 |

For rental units, the regulatory agreement identifies the affordability related requirements including

household income limits, rent limits, reporting requirements, and compliance monitoring procedures. Commission staff begin monitoring when units are first placed in service and add them to the existing affordable housing inventory database. All property owners are subsequently sent updated income and rent limits annually, as new limits are published by the United States Department of Housing and Urban Development (HUD) and California Department of Housing and Community Development (HCD).

The property owner must submit compliance reports to the Commission annually for the term of the regulatory agreements, which have period of affordability terms of 30 to 55 years, depending on the date that the units were built and the type of assistance received. The compliance report includes a signed certification of the property owner or their representative attesting to the accuracy of the reported rents charged and incomes of the households residing in the restricted units.

Verification Steps:

The compliance reports are reviewed by Commission staff to determine if the affordable unit income and rent restrictions comply with the regulatory agreement requirements. The next steps are as follows:

1. If questions or findings of noncompliance are determined, Commission staff notify the owner regarding the issues that need correction, with a timeline for correction.
2. Commission staff then follow up to ensure that issues are corrected and resolved.
3. If issues are not resolved or an owner does not respond to findings of noncompliance, Commission staff will again notify the property owner or the owner's onsite management designee of the deficiencies and begin implementation of the default and damages provisions of the regulatory agreement.

In addition to the monitoring described above, federal regulations require that Commission staff visit the thirty HOME Investment Partnerships Program ("HOME")-funded projects in person at least once every 3 years for onsite monitoring. The onsite monitoring includes:

1. Interviewing the owner or owner's representatives;
2. Reviewing all HOME tenant files; and
3. Inspecting the units for any health or safety issues.

For all units assisted with other funds or benefitting from County regulatory incentives, the Commission's existing Affordable Housing Monitoring Procedures Manual (provided as Attachment 1) specifies that staff will perform onsite visits on a staggered, periodic basis. The frequency of the visits is not specified. In the past, these units were generally inspected as needed based on a compliance risk analysis determined from findings from the property owners' self-certified compliance reports or complaints from tenants or others. These in-depth monitoring visits and inspections follow the same protocol as the HOME site inspections.

Some of the restricted affordable housing units in the Commission's inventory also receive subsidies through other funding streams, such as the California Tax Credit Allocation Committee ("TCAC" has 18 properties in Sonoma County under monitoring requirements) and the California Housing Finance Agency ("CalHFA" also has 18 properties in Sonoma County, with 1,293 units), and they are also monitored for compliance by those entities in accordance with those agencies' procedures.

If the restricted units are subject to monitoring by another agency, and if the other agency's affordability requirements are the same or more restrictive than the Commission's affordability requirements, the Commission may rely on the other agency's monitoring work. Where another agency's compliance reporting

applies, Commission staff require the property owner or the property owner's designated manager to submit evidence to the Commission of the other agency's affordability requirements and monitoring of the units' compliance with those requirements. The submitted documentation must be sufficiently detailed for the Commission to confirm whether or not the other agency's requirements for the units follow the Commission's affordability requirements.

Affordable homeownership properties are also monitored annually to confirm that they continue to be occupied by the assisted household, which is a requirement of the regulatory agreements. Home insurance and mobile home registration (when applicable) are also monitored throughout the year, and owners are contacted if there are issues of noncompliance with requirements. When an assisted homeowner plans to sell their property, Commission staff administers the provisions in the recorded option agreement to ensure compliance with the requirements that the new purchaser is an income-eligible household and that the sales price does not exceed the allowed maximum.

The Commission's compliance staff receives calls and emails from property owners and their managers throughout the year with questions regarding their covenants and regulatory agreements, and about any other compliance related issues with which they need assistance. Commission staff provide technical assistance as needed to help owners understand and comply with the terms of their affordable housing restrictions.

More about the HOME Projects. Of the 150 different property locations noted earlier, there are currently 30 that are HOME-funded and require onsite monitoring every 3 years.

In April 2020, HUD issued a memorandum suspending certain statutory requirements of the HOME Program, including onsite monitoring. This suspension was related to the COVID-19 pandemic and terminated on September 30, 2021. HOME onsite monitoring that was subject to suspension for the duration covered by the HUD memorandum must be monitored within 180 days of October 1, 2021, and no later than March 31, 2022. During the period of the HUD onsite monitoring suspension, there were 13 HOME onsite monitoring visits that could not be scheduled. Commission staff has conducted 6 of these onsite monitoring visits and is in the process of scheduling and conducting the additional 7 prior to March 31, 2022.

Vineyard Creek near Windsor, CA. Additionally, Commission staff conducted an onsite compliance monitoring in September 2021 at the Vineyard Creek Apartments (which is not a HOME-funded site). This onsite monitoring was scheduled in response to a risk analysis based on recent concerns brought to the attention of the Commission. Three Commission staff conducted the onsite monitoring visit. The visit included an interview with the property management staff, inspection of the files for all of the 47 restricted units to audit the documentation supporting the rent and income certifications on the annual compliance report, and inspection of 5 units and common areas to ascertain adequacy of maintenance standards.

A new recommended approach following our review of existing processes. Commission staff intends to make the following changes to our Manual and monitoring procedures, which are greater than or consistent with best practices for other similar sized government affordable housing organizations:

- **All Projects Will be Reviewed Every Three Years.** Commission staff will visit all restricted affordable housing developments to perform an onsite monitoring at least once every 3 years, and more frequently for developments deemed high risk. A risk analysis will designate developments as having a high, medium, or low risk. A high-risk development may be a for-profit-owned project with density bonus or inclusionary units, a development with known complaints, or a development with recent findings of noncompliance. A low risk development may include projects owned by mission-driven affordable housing organizations and projects with regulatory agreements with other agencies that have comparable or more stringent

monitoring requirements.

- **Routine Submission of Back-Up Materials to the CDC.** For properties that are not scheduled for an onsite monitoring visit in a given year, Commission staff will request and monitor back up supporting documentation regarding rent and income levels for:
 - 10% of the restricted affordable units at each development with 10 or more restricted units, and;
 - 100% of the restricted affordable units at developments with less than 10 restricted units.
- **Wait List Review.** For onsite monitoring visits, Commission staff will initiate a new procedure of reviewing the development's wait list to ascertain how households on the wait list are prioritized for placement in restricted units as the occupancy turns over, and to monitor compliance with the development's approved fair marketing and tenant selection plans.

Assuming the Board approves this item, these changes will be incorporated into our Manual after the Board's consideration of this item (they are not yet in the Manual provided as Attachment 1).

The Commission is in the process of transitioning to a new database (Neighborly) for restricted affordable units. A new functional database will facilitate the scheduling and tracking required for effective compliance monitoring, as the current spreadsheet tracking method is antiquated.

Currently only HOME-assisted projects, representing about 1/3rd of the rental developments with restricted affordable housing units in the Commission's inventory, require onsite monitoring. While the planned procedural changes will help to ensure compliance more broadly across all restricted units, the Commission is likely to require additional staff resources to handle the substantial increase to Commission staff's scope of work. In addition, the new Neighborly database requires additional staff time to support the process of onboarding and transition from the existing spreadsheet tracking system and to train additional Commission staff on use of the new software.

Funding an Improved Process. Property owners are required to pay monitoring fees to the Commission to defray the compliance monitoring costs. The annual fee is currently set at \$75 per unit per year (a fee not adjusted since May 2004), generating a total of approximately \$49,000 per year. This is sufficient to pay for a portion of an existing Commission staff member position to perform this work, but we expect that these procedural changes will increase the workload to require a dedicated, 1.0 full-time equivalent (FTE) position (likely to be classified as a Community Development Specialist), up from the 0.5 FTE used today.

As such, we intend to complete a cost-of-services study that may lead to increasing this fee in a manner that covers actual costs including the additional staff resources to implement the monitoring procedure changes and integrating the Neighborly database. Table 2 shows what some other nearby jurisdictions charge for this same fee:

Table 2

| County | Monitoring Fee |
|-------------|--|
| Marin | No fee |
| Santa Clara | \$100/unit/year |
| Napa | Sliding scale: \$1,000 set up fee (one time) 1-40 Units: \$100/unit/year 41-80 units: \$80/unit/year 81+ units: \$60/unit/year |
| Alameda | \$300/unit/year |
| San Mateo | No fee (Monitoring fee adopted, but amount not yet set by resolution) |

The fee should also have an automatic cost of living adjustment (COLA) applied to it to ensure that the fee stays current with actual costs. As the fee is reviewed, updated, and approved, we intend to return to the Board for approval to add the dedicated 1.0 FTE position (a Community Development Specialist) while using the existing 0.5 FTE to assist and fill in as needed.

If an approved monitoring fee does not fully cover the cost of the work, the Commission may alternatively use County Fund for Housing (CFH) monies to fund any shortfall in these costs provided that the monitoring activity relates to developments that received a CFH loan, have an inclusionary or workforce housing requirement, or that received a density bonus or other County regulatory incentive.

Use of CFH funds are allowed for this purpose pursuant to Article 89 of the Sonoma County Code, which states, “Monies may also be used to cover administrative expenses incurred by the...CDC in connection with affordable housing and not otherwise reimbursed through processing and other fees, including: ...CDC administrative costs for project development, permitting, post Development Code compliance, and the ongoing monitoring of affordable housing projects constructed with affordable housing fee trust funds.”

However, this will result in the annual CFH allocation - which otherwise generally goes towards critical capital funds for new projects - being slightly smaller.

Affordable Housing In-Lieu or Impact Development Fees. The Board on December 15, 2020 during the AB 1600 Development Fees Annual Report for FY 2019-20 asked that County staff look at “tiering” another fee - the fee that Permit Sonoma charges when a market-rate housing developer chooses to pay a fee rather than include one or more affordable housing units at the developer’s project. Permit Sonoma collects these fees with building permits, and the fees then become revenue to the County Fund for Housing (CFH). The CFH is administered by the Commission and released to eligible affordable housing projects via a competitive Notice of Funding Availability annually.

The Board suggested at the time staff look into a fee structure where a smaller market-rate unit might pay a smaller in-lieu fee, and likewise a larger unit may pay a larger fee. In order to move to this fee method, a consultant would likely be needed to study and provide a pathway for this tiering, to ensure that the methodology is sound. This Board item seeks authorization to pursue this study.

Strategic Plan:

This item directly supports the County’s Five-year Strategic Plan given that it protects and supports the existing (and future) supply of affordable housing units that are reserved for individuals and families of specific income levels. The item is aligned with the following pillar, goal, and objective:

Pillar: Healthy and Safe Communities

Goal: Goal 3: In collaboration with cities, increase affordable housing development near public transportation and easy access to services.

Objective: Objective 3: Create incentives for developers to promote affordable housing development in the County. This item is the other side of incentive creation but still consistent with the objective. The County needs to appropriately review and monitor how the incentives are being used to ensure their viability and outcomes.

Prior Board Actions:

N/A

FISCAL SUMMARY

| Expenditures | FY 21-22 Adopted | FY 22-23 Projected | FY 23-24 Projected |
|------------------------------------|-----------------------------|-------------------------------|-------------------------------|
| Budgeted Expenses | | | |
| Additional Appropriation Requested | | | |
| Total Expenditures | 0 | 0 | 0 |
| Funding Sources | | | |
| General Fund/WA GF | | | |
| State/Federal | | | |
| Fees/Other | | | |
| Use of Fund Balance | | | |
| Contingencies | | | |
| Total Sources | 0 | 0 | 0 |

Narrative Explanation of Fiscal Impacts:

There are no specific fiscal impacts associated with this item, however:

1. Staff intends to return to the Board following completion of an in-house cost of services study that sets the appropriate monitoring fee level after following County and State requirements as to fee establishment and modification; and
2. Staff will need to review existing budgeted resources to conduct the update of the in-lieu fee to ensure that resources are available to complete it.

| Staffing Impacts: | | | |
|--|--|-------------------------------|-------------------------------|
| Position Title (Payroll Classification) | Monthly Salary Range (A-I Step) | Additions (Number) | Deletions (Number) |
| | | | |
| | | | |
| | | | |

Narrative Explanation of Staffing Impacts (If Required):

Not applicable at this time, although staff is suggesting that additional staff resources be dedicated to this effort in the future, once a fee is updated based on the cost of providing the service.

Attachments:

Attachment 1: Existing Procedures Manual (not amended at this time), with Exhibits

Related Items “On File” with the Clerk of the Board:

None