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CITY COUNCIL INFORMATIONAL MEMORANDUM

Date: April 25, 2024

To: Cupertino City Council

From: Pamela Wu, City Manager

Re: Transactions to the Below Market Rate (BMR) Affordable Housing Fund (AHF)

Background

The memo is to provide additional information and update of the current BMR fund expenditures.

The City of Cupertino commissioned a nexus study in 1992 to evaluate the relationship between land use and affordable housing. The study showed that new developments create additional housing needs and placed strain on the City's affordable housing programs. As a result, in 1995 the City adopted a Housing Mitigation Procedural Manual in order to establish requirements for residential and office/industrial developers to mitigate those additional housing needs. An updated nexus study was commissioned in 2015 for linkages between residential and non-residential developments in the City and the demand for additional affordable housing.

In accordance with the City of Cupertino's Housing Element, all new residential and/or non-residential developments are required to help mitigate project related impacts on affordable housing needs. As required by Section 19.172.030 of the Cupertino Municipal Code, the BMR Housing Mitigation Program Procedural Manual ([BMR Manual](#)) establishes procedures for implementing the affordable housing mitigation provisions of the City's BMR program. City Council previously in 2015 and 2020 adopted updated versions of the [BMR Manual](#) which establishes procedures to implement housing mitigation as required by the General Plan 2015-2022 Housing Element.

The BMR Housing Mitigation Program also identifies the mitigation fees. The Non-residential and Residential Housing Mitigation Programs are applicable to all non-residential and/or residential projects that result in an increase of gross floor area and/or the number of net new units in a development. The Affordable Housing Mitigation Fee was set by the City Council to benefit the needs of the low-income community as identified in the nexus study and help mitigate project-related impacts on affordable housing needs. All fees are deposited into the City's BMR Affordable Housing Fund (AHF). The BMR AHF can be

utilized for a variety of uses as identified in the BMR Manual section 2.2.2, including program administration.

In February, 2024, the City was informed of an issue regarding the miscoding of transactions to the BMR AHF, specifically those involving attorney fees in the Housing Element litigation. The City has identified this issue and has taken immediate steps to implement controls to prevent similar miscodings in the future. The new implementation procedure involves staff education of permissible BMR expenditures, more detailed identification of transactions, and an additional approval requirement prior to processing transactions.

BMR AHF has been used for a variety of different purposes that are related to low income housing. The City's BMR Housing Program contains 141 rental units and 119 ownership units, and the administration of this program is covered by BMR AHF, including consultants and city staff costs. The City also provides a public service grant to a nonprofit organization called Project Sentinel for the provision of fair housing services to Cupertino residents. In addition, in 2017, BMR AHF was provided to assist with the development of The Veranda, which is a 19-unit affordable senior citizen housing development located in the city.

To correct these errors, staff is conducting a review of all transactions processed to the fund over the past five years from 2019 to 2024. Any misclassified expenses will be reclassified to the appropriate fund. Due to the significant volume of transactions posted to the fund, we anticipate this process will take some time to complete.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

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Christopher Jensen, City Attorney

Approved for Submission by: Pamela Wu, City Manager