TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE AGENDA
SEPTEMBER 24, 2019
110 EAST MAIN STREET
LOS GATOS, CA
5:00 PM

Marcia Jenson, Vice Mayor
Barbara Spector, Council Member

MEETING CALLED TO ORDER

ROLL CALL

CONSENT ITEMS *(Items appearing on the Consent Items are considered routine and may be approved by one motion. Any member of the Council or public may request to have an item removed from the Consent Items for comment and action. If an item is pulled, the Mayor has the sole discretion to determine when the item will be hear. Unless there are separate discussions and/or actions requested by Council, staff, or a member of the public, it is requested that items under the Consent Items be acted on simultaneously.)*

1. Approve the Draft Minutes of the August 27, 2019 Council Policy Committee Meeting

VERBAL COMMUNICATIONS *(Members of the public are welcome to address the Town Council on any matter that is not listed on the agenda. To ensure all agenda items are heard and unless additional time is authorized by the Mayor, this portion of the agenda is limited to 30 minutes and no more than three (3) minutes per speaker. In the event additional speakers were not able to be heard during the initial Verbal Communications portion of the agenda, an additional Verbal Communications will be opened prior to adjournment.)*

OTHER BUSINESS *(Up to three minutes may be allotted to each speaker on any of the following items.)*

2. Discuss and Provide Direction on the Land Use Appeal Process
3. Provide Direction on Potential Amendments to the Town Code Regarding Right of Way Dedication, Installation of Curbs, Gutters and Sidewalks, and Undergrounding of Utilities
4. Provide direction on potential amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding below market price regulations and options for the use of below market price in-lieu fees
5. Discuss and Provide Direction on a Planning Grants Program Application

ADJOURNMENT *(Council policy is to adjourn no later than midnight unless a majority of Council votes for an extension of time)*

DRAFT
Minutes of the Regular Town Council Policy Committee Meeting
August 27, 2019

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, August 27, 2019, at 5:00 p.m.

MEETING CALLED TO ORDER AT 5:00 P.M.

ROLL CALL

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Arn Andrews, Assistant Town Manager; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Shelley Neis, Clerk Administrator; Michelle Radcliffe, Deputy Clerk; Jocelyn Shoopman, Associate Planner; Holly Zappala, Management Analyst.

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

1. **Approval of the July 23, 2019 Council Policy Committee Minutes.**

   Approved with one modification.

2. **Review and Provide Direction on Proposed Modifications to the Commission Appointment Policy.**

   Shelley Neis, Clerk Administrator, presented the staff report.

   After discussion, the Committee agreed to forward a recommendation to the Town Council to amend the Commission Appointment Policy to allow applicants to apply for more than one Commission at a time.

3. **Discuss and Provide Direction on the Land Use Appeal Process.**

   After continuing its discussion from prior meetings, the Committee asked staff to return to with revised language reflecting the following two options for the land use appeal process:

- The Town Council may consider additional findings/information as part of the land use decision appeal; and
- The appeal is returned to the Planning Commission if the Town Council grants the appeal based on information not presented to the Planning Commission.

The Committee asked that the revised language be simple, easy to understand, and clear about the Council's full discretion to decide the matter.

The Committee also requested that staff create a brochure to provide to appellants with information about filing an appeal, including frequently asked questions, deadlines, and options for withdrawal and refunds.

The Committee remained in agreement that the land use appellant has the responsibility ("burden of proof") of providing information to support a finding and not the Town Council.

4. **Provide Direction on Potential Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Below Market Price Regulations and Options for the Use of Below Market Price In-Lieu Fees.**

   Jocelyn Shoopman, Associate Planner, presented the staff report.

   After discussion, the Committee asked staff to return to the Committee with options for potential uses of the existing Below Market Price (BMP) in-lieu fees, and alternatives to modify the BMP program consistent with the goals of increasing the number of BMPs in the Town, decreasing the number of in-lieu fees collected, and keeping BMPs on-site when possible.

ADJOURNMENT
The meeting adjourned at 6:15 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the August 27, 2019 meeting as approved by the Town Council Policy Committee.

____
Holly Zappala, Management Analyst

DATE: September 12, 2019

TO: Council Policy Committee

FROM: Laurel Prevetti, Town Manager

SUBJECT: Discuss and Provide Direction on the Land Use Appeal Process

RECOMMENDATION:

Discuss and provide direction on the land use appeal process.

BACKGROUND:

On June 25, 2019, the Policy Committee considered changes to the Town Code regarding the requirement that the Town Council make one of three findings to modify or reverse the decision of the Planning Commission on any appeal. The Committee members reached a consensus on the following matters:

- Revise Section 29.20.275 of the Town Code to require the appellant's notice of appeal to include the error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record, and to clarify that the appellant may submit a written request to withdraw their appeal any time before the scheduled hearing for the appeal;
- Revise Section 29.20.295 of the Town Code to require the appellant to bear the burden of proof in proving that the Planning Commission decision was not supported by substantial evidence; and
- Remove the requirement that the Town Council make one of three findings to modify or reverse the decision of the Planning Commission on an appeal from Section 29.20.300 of the Town Code.

PREPARED BY: JOEL PAULSON
Community Development Director

Reviewed by: Town Manager

110 E. Main Street Los Gatos, CA 95030 ● (408) 354-6832
www.losgatosca.gov

BACKGROUND (continued):

The changes that both Policy committee members reached a consensus on are as follows:

Sec. 29.20.275. - Appeals from decisions by the Planning Commission.
Any interested person as defined in section 29.10.020 may appeal to the Council any decision of the Planning Commission. The appellant must file a written notice of appeal in duplicate with the Clerk not more than ten (10) days after the decision is rendered. ~~The notice shall state clearly the reasons why the appeal ought to be granted.~~ The notice of appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by substantial evidence in the record. The Council shall only hear the appeal if the notice is filed and all required fees are paid within the ten-day appeal period. ~~Once a notice of appeal has been filed, it may be withdrawn by the appellant prior to the distribution of public hearing notices, but not thereafter~~. An appellant may submit a written request to withdraw their appeal any time before the scheduled hearing for the appeal.

~~**Sec. 29.20.300. - Decision.**~~
~~(a) Any decision of the Council modifying, in whole or in part, the order, requirement, decision, determination, interpretation, or ruling appealed from, or making and substituting another decision or determination, requires the concurrence of a majority of the membership of the Council.~~
~~(b) If the Council decides to modify or reverse the decision of the Planning Commission, on any appeal, the resolution shall specify one or more of the following:~~
~~(1) Where there was error or abuse of discretion on the part of the Planning Commission; or~~
~~(2) The new information, that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission.; or~~
~~(3) An issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.~~
~~c) If the only or predominant reason for modifying or reversing the decision of the Planning Commission is the availability of new information as defined in subsection~~

~~(b)(2) above, it is the policy of the Town that the application will be returned to the Commission for review in light of the new information unless the new information has minimal effect on the application.~~
~~(dc) The decision of the Council upon the appeal will be expressed by a written resolution. The Council will forthwith transmit copies of the resolution to the original applicant, the appellant, and the Planning Commission.~~

BACKGROUND (continued):

Regarding Section 29.20.295 of the Town Code, the Policy Committee did not reach a consensus on whether the Town Council should be able to consider additional information during the appeal process. Therefore, after discussion, the Committee's direction in June was to move forward without a recommendation on this specific issue, after returning to the Committee with the potential changes to Town Code representing the two points of view. On July 23, 2019, and again on August 27, 2019, the Committee did not agree that the revised ordinance language provided accurately represented the second point of view, and therefore provided direction to return with revised ordinance language representing the second point of view.

DISCUSSION

The Committee agreed that the following language accurately represented the first point of view, wherein the existing ordinance language that the Town Council may consider the record and such additional information as may be offered by anyone during the appeal process, would be retained:

> **Sec. 29.20.295. - Council hearing and decision.**
> When hearing the appeal, the Council shall consider the record and such additional information as may be offered by anyone and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. The appellant bears the burden of proof before the Council in~~s~~ proving that one or more of the reasons specified in section 29.20.~~300~~ 275 exist on the appeal for reversing or modifying the Commission determination. The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

The Committee did not agree that the revised ordinance language provided in August accurately represented the second point of view, and therefore provided direction to return with the following revised ordinance language clarifying that the application will be remanded to the Planning Commission if new information is provided:

> **Sec. 29.20.295. - Council hearing and decision.**
> When hearing the appeal, the Council shall consider the record ~~and such additional information as may be offered by anyone~~ and may affirm, modify or reverse, in whole or in part, the determination appealed from, or make and substitute such other determination as is warranted, or may remand to the Planning Commission for further review and determination. The application will be remanded to the Commission if new information is provided that was not readily and reasonably available for submission to the Commission, unless the new information has minimal effect on the application. The

appellant bears the burden of proof before the Council in~~s~~ proving that one or more of the reasons specified in section 29.20.~~300~~ 275 exist on the appeal for reversing or modifying the Commission determination. The standards of this chapter governing the discretion of the reviewing body shall apply with equal effect to actions of the Council.

Staff looks forward to the Policy Committee review of the revised language, discussion, and direction for next steps.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's and Town Attorney's offices.

TOWN OF LOS GATOS
POLICY COMMITTEE REPORT

MEETING DATE: 9/24/2019

ITEM NO: 3

DATE: September 20, 2019

TO: Council Policy Committee

FROM: Laurel Prevetti, Town Manager

SUBJECT: Provide Direction on Potential Amendments to the Town Code Regarding Right of Way Dedication, Installation of Curbs, Gutters, and Sidewalks, and Undergrounding of Utilities

RECOMMENDATION:

Provide direction on potential amendments to the Town Code regarding right of way dedication, installation of curbs, gutters, and sidewalks, and undergrounding of utilities.

BACKGROUND:

On June 18, 2019, the Town Council approved modifications to the demolition policy to allow for streamlining of the building permit process. The modifications will allow buildings that maintain more than 50 percent of their exterior walls, without being contiguous, to go through a standard building permit application process as opposed to the Architectural and Site application process. Due to this change, these projects will not be reviewed by the Town's Parks and Public Works Department for right of way dedication, inclusion of curbs, gutters, and sidewalks, and undergrounding of utilities. The Town Code specifies these elements for subdivisions, but remains silent on other types of development projects.

Historically, Parks and Public Works has reviewed development plans for conditioning of right of way dedication, curbs, gutters, and sidewalks, and undergrounding of utilities under the following permits:

- New subdivisions;
- New commercial and single-family home developments;
- Remodels of commercial and single-family home developments when the applications go through the discretionary Architectural and Site application process.

PREPARED BY: Lisa Petersen
Assistant Director of Parks and Public Works/Town Engineer

Reviewed by: Town Manager, Town Attorney, and PPW Director

110 E. Main Street Los Gatos, CA 95030 ● 408-354-6832
www.losgatosca.gov

BACKGROUND (continued):

On July 23, 2019, the Policy Committee reviewed and provided direction on potential regulations for these items. After the discussion, the Committee asked staff to return to the Policy Committee with proposed amendments to the Town Code applicable to building permits. The Committee also requested that staff review the current practice regarding when and how "in lieu" sidewalk fee money is used.

DISCUSSION:

Proposed Code Amendments

As provided to the Policy Committee in the July 23, 2019 report, both the City of Cupertino and the City of Campbell have broad code requirements for dedication of right of way and/or the installation of improvements such as curbs, gutters, and sidewalk, and undergrounding of utilities when a building permit is required. Both cities further define when the building permits will be routed to their Public Works Departments for conditioning of right of way or improvements based on Building Department procedural documents. Staff is recommending Code changes in alignment with these cities.

Potential changes to Town Code Chapter 23 Streets and Sidewalks would address the dedication of right of way and/or the installation of improvements when a building permit is required:

> **Sec. 23.10.005 – Requirements – General**
> Any person who proposes a substantial upgrade to erect, construct, add to, alter or repair any building or structure for which a building permit is required by the Town adjacent to an unimproved street, or who seeks a use permit, planned development permit, or architectural and site approval from the Town for land adjacent to an unimproved street must agree to improve, or agree to improve by installation agreement, said street by the installation of improvements, under the provisions of this chapter. This may include dedication or an irrevocable offer of dedication of land that is needed for streets, alleys including access rights and abutters' rights, drainage, public utility easements and open space land or easement, park lands, trail rights of way or easements, and other public easements. In addition, the owner/developer shall improve or agree to improve all streets, alleys, including access right and abutters' rights, drainage, public utility easements, and other public easements as determined by the Town Engineer. These improvements may include, but are not limited to, installation of curbs, gutters, and sidewalk, pavement, bicycle improvements, and undergrounding of utilities.

DISCUSSION (continued):

Staff is recommending that building permit plans be routed to Public Works for conditioning of necessary right of way and/or public improvements should the permit be deemed a "substantial remodel." In general alignment with neighboring cities, a substantial remodel would meet three or more of the following criteria:

- The valuation of the work exceeds $180,000;
- Seventy-five percent (75%) or more of the existing roof framing (square footage area) will be removed;
- Fifty percent (50%) or more of the existing exterior wall [Square Foot (SF)] will be removed; or
- Fifty percent (50%) or more of the existing interior wall [Lineal Foot (LF)] will be removed.

To determine if a building permit meets these conditions, a form requesting this information would be required from the licensed professional preparing the architectural plans. Should this form show the work meeting the "substantial remodel" definition, the Building Department would then route the plans to Parks and Public Work for review and possible conditioning of dedication or public improvements, as determined by the Town Engineer.

Sidewalk In-Lieu Fee

Currently, sidewalk installation is required for new developments that do not have sidewalk and are adjacent to a property that has installed sidewalk. In cases (outside of the hillside area) where no adjacent sidewalk exists, developments are required to pay a sidewalk in-lieu fee.

The Town has collected $182,633 in sidewalk in-lieu fees since FY 2016/17. In the past, the Town has not increased the Annual Curb, Gutter, and Sidewalk Maintenance project budget by the actual receipts. In FY 2018/19, the ongoing budget for the annual project was increased by $50,000 to a $300,000 per year allocation and in FY 2019/20, the budget was increased by $600,000 (one-time) to address a backlog in needed concrete repairs and ramp installations. In the future, staff would recommend to the Town Council a Mid-Year budget adjustment for the Annual Curb, Gutter, and Sidewalk Maintenance project based on the prior year receipts of sidewalk in-lieu fees to ensure that these fees are used as intended. The yearly budget allocation would remain $300,000 per year, with receipts reducing the general fund allocation by an equivalent amount.

COORDINATION:

This report has been coordinated with the Town Attorney's Office and the Community Development Department.

ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA and no further action is required.

Attachments:
Previously received with the July 23, 2019 Staff Report:
1. Subdivision Ordinance
2. Sample Ordinance language from Campbell and Cupertino

TOWN OF LOS GATOS

COUNCIL POLICY COMMITTEE REPORT

MEETING DATE: 09/24/2019

ITEM NO: 4

DATE: September 19, 2019

TO: Council Policy Committee

FROM: Laurel Prevetti, Town Manager

SUBJECT: Provide direction on potential amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding below market price regulations and options for the use of below market price in-lieu fees.

RECOMMENDATION:

Provide direction on potential amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding below market price regulations and options for the use of below market price in-lieu fees.

BACKGROUND:

On April 9, 2019, the Policy Committee discussed potential amendments to the Town Code regarding below market price (BMP) regulations. Following a brief discussion, the Policy Committee provided direction to staff to bring back the following items for further discussion:

- BMP regulations in other communities;
- The Town's Affordable Housing Strategy;
- Residential linkage fees;
- Options for amending the Town's BMP regulations, including:
  - Lowering the threshold for requiring BMP units,
  - Greater flexibility in unit sizes and types; and
- Options for use of the Town's accumulated and future BMP in-lieu fees.

On August 27, 2019, the Policy Committee continued their discussion regarding potential amendments to the Town Code and BMP regulations. The Policy Committee provided direction to staff to bring back the following items for additional discussion:

PREPARED BY: Joel Paulson
Community Development Director

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

BACKGROUND (continued):

- Options for potential uses of the existing BMP in-lieu fees;
- Options to modify the BMP regulations to increase the number of BMP units and decrease the opportunities to pay in-lieu fees; and
- Options to have BMP units constructed on-site for development projects.

DISCUSSION:

While the Town's Redevelopment Agency no longer exists, the recommended programs and initiatives contained in the Town's Affordable Housing Strategy report could still be considered by the Policy Committee for potential uses of the existing BMP in-lieu fees. Section E. (Housing Fund) of the BMP Housing Program Guidelines also contains potential recommendations that are included for the Policy Committee's consideration. Potential options for using BMP in-lieu fees include, but are not limited to:

1. Issuing a Notice of Funding Availability (NOFA) for an affordable housing project;
2. Purchasing existing units to make them affordable to low/moderate income households;
3. Purchasing land for future development of affordable housing;
4. Purchasing affordability covenants for existing rental units;
5. Purchasing affordability covenants for required BMPs to lower the affordability level;
6. Purchasing affordability covenants for proposed rental or for sale projects; and
7. Providing zero or low interest loans for accessory dwelling units (ADU) that include affordability covenants.

Staff has prepared modified potential amendments to the Town Code (Attachment 6) and the BMP Housing Program Guidelines (Attachment 7) based on the discussion of the Policy Committee at the August 27, 2019 meeting to increase the number of BMP units and decrease the opportunities to pay in-lieu fees, and have BMP units constructed on-site for development projects. The potential amendments are shown in ~~strike-through~~ and underline font. Potential amendments include:

1. Removal of projects in the R-1 and HR zones from being exempt from BMP participation;
2. Removal of planned development projects with an underlying zone of HR from only being required to pay an in-lieu fee;
3. Removal of any reference to the Los Gatos Redevelopment Agency or Community Benefit requirements;
4. Modifications to language regarding the size of BMP units to allow for greater flexibility; and
5. Modifications to language regarding the parking requirements for BMP units to allow for a reduction in parking as determined by the deciding body.

DISCUSSION (continued):

Staff will be available at the meeting to answer questions and looks forward to receiving direction on potential amendments to the Town's BMP regulations.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's Office.

Attachments:

Previously received with the August 27, 2019 Staff Report:
1. Table V-1 of Affordable Housing Nexus Study prepared for Santa Clara County
2. Affordable Housing Strategy
3. FY 2018-19 Town Operating Budget, BMP Housing Program
4. Potential Town Code Amendments
5. Potential Amendments to the BMP Housing Program Guidelines

Received with this Staff Report:
6. Modified Potential Town Code Amendments
7. Modified Potential Amendments to the BMP Housing Program Guidelines

DIVISION 6. - HOUSING ASSISTANCE PROGRAM

Sec. 29.10.3000. - Intent.

This division is adopted to meet housing needs shown in the housing element of the general plan.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3005. - Below market price program—Established.

This division establishes the below market price program (BMP).

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3010. - Same—Intent.

The below market price (BMP) program requires the provision of dwellings that persons and families of moderate income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate income.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3015. - Application.

This division shall apply to all residential projects, mixed-use projects, and multiple-family dwelling projects, residential condominium projects, condominium conversions, and to all residential planned development projects (division 2 of article VIII of this chapter) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings. ~~Projects in the R-l and HR zones are excepted from BMP participation. The exception does not apply if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.~~

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3020. - Definitions.

For the purposes of this division the following definitions shall apply:

BMP dwelling means any residential dwelling unit designated for very low, low, and moderate income under the rules of this section.

Person of moderate income means one whose income falls within the range specified by the Town Council in the resolution authorized by section 29.10.3040.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3025. - Scope.

The Below Market Price Program requirements shall apply to all residential development projects that include five (5) or more residential units or parcels which involve:

1. New construction of ownership or rental housing units, including mixed use developments and addition of units to existing projects, or
2. Subdivision of property for single family or duplex housing development, or
3. Conversion of rental apartments to condominiums or other common interest ownership, or
4. Conversion of non-residential use to residential use.

~~Planned development with an underlying zone of HR shall only be required to pay an in-lieu fee as established by a separate resolution.~~

The residential developments consisting of five (5) or more units are required to provide the following number of BMP units:

(1) Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units.

(2) Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:

Number of BMP units = .225 (total # of market rate units) - 2.5

(3) All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units.

(4) Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number.

(5) The Town, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit ~~in the case of Planned Unit development with an underlying zone of HR~~. The required in-lieu fee is as established by a separate resolution and is to be paid to the Town prior to issuance of the certificate of occupancy for the market rate residential unit that triggered the BMP requirement. The provision for a BMP unit applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

BMP units shall be constructed and Certificate of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town Council may grant an exception to the phasing requirements during the project approval process.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3030. - Price.

The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows:

(1) The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council.

(2) The initial price does not include the cost of land, profit, or marketing costs.

(3) Each BMP unit will be subjected to recorded title restrictions concerning manner of fixture sales, occupancy and leasing.

(4) Each buyer of a BMP unit must agree to sell the unit to a moderate income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit.

(5) The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council.

(6) If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5).

(7) The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3035. - Project denial.

If an applicant for zoning approval declines to provide BMP units required by ordinance, the zoning approval shall be denied.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3040. - Administration.

The Council shall adopt by resolution regulations concerning all aspects of the BMP program, including the elements of location of the units, price, buyer eligibility standards, rent, the length of the period during which a unit will be subject to BMP restrictions, the form of recorded instruments and any other matter consistent with the provisions of this section.

(Ord. No. 2181, § III, 10-19-09)

This Page Intentionally Left Blank

Exhibit A

TOWN OF LOS GATOS
BELOW MARKET PRICE HOUSING PROGRAM GUIDELINES

I. Purpose

A. Purpose: The overall purpose of the Below Market Price (BMP) Housing Program is to provide the Town of Los Gatos with a supply of affordable housing. While the program is available to all qualified applicants, the general intent of the program is to provide affordable housing for households who work or currently live in Los Gatos. The main goal is to increase the housing supply for households that have median and low incomes compared to the median income for Santa Clara County and meet the housing needs identified in the Town's General Plan Housing Element. The Program further intends to ensure, to the greatest extent possible, that rent and re-sale of these housing units will remain affordable to median and low income levels for the longest feasible time as approved by an authorized body. Although the Town has a fee-in-lieu of constructing actual units option for defined circumstances, the primary objective of the BMP Program is to obtain actual "rental" or "for sale" housing units rather than equivalent funds. All off-site BMP units shall be constructed within the Town of Los Gatos. The construction and occupancy of the BMP unit is determined according to these Town Council established guidelines and authorizing ordinances.

B. Enabling Legislation: The Below Market Price Program is governed by Division 6 of the Town Code. The BMP Program is administered under these Below Market Price Housing Program Guidelines.

II. Below Market Price Housing Requirements – General

A. Applicability: The BMP Program requirements shall apply to all residential development projects that include five (5) or more residential units or parcels which involve:

1. New construction of ownership or rental housing units, including mixed use developments and addition of units to existing projects, or
2. Subdivision of property for single family or duplex housing development, or
3. Conversion of rental apartments to condominiums or other common interest ownership, or
4. Conversion of non-residential use to residential use.

ATTACHMENT 7

B. Number of BMP Units: All residential developments consisting of five (5) or more units are required to participate in the BMP Program. The requirements for participation increase by development size as shown below:

1. Five (5) to Nineteen 19 market rate units: The developer shall provide a minimum number of BMP units equal to ten (10) percent of the number of market rate units.

2. Twenty (20) to one hundred (100) market rate~~s~~ units: The developer shall provide a minimum of BMP units as determined by the following formula:

   Number of BMP units = (.225 x total # of market rate units) - 2.5
   This formula acts to increase the number of BMP units required, as a percentage of market-rate units, from 10% to 20% over the range of 20 to 100 market rate units.

3. One hundred and one (101) units or more: The developer shall provide a minimum number of BMP units equal to twenty (20) percent of the number of market rate units.

BMP dwellings within a project of rental units shall also be rental units. BMP units within a project of owner-occupied units shall also be designated as units for purchase. BMP units within a project that contains both rental and owner-occupied units shall also be designated as both rental and as units for purchase, in a ratio similar to that of the market rate units.

The Town and developer may negotiate to provide more BMP units than required by the rules listed in these guidelines. ~~to fulfill a development's Community Benefit requirements.~~

C. Fraction of a BMP Housing Units: In determining the number of BMP units required, any decimal fraction of .5 or above shall be rounded up to the nearest whole number. Decimal fractions below .5 shall be rounded down to the nearest whole number.

D. Residential In-Lieu Payments: The general intent of the BMP Program is to provide the Town of Los Gatos with a supply of affordable housing for households who work or currently live in Los Gatos. However, there may be circumstances when the construction of the BMP unit is impractical or there are unusual circumstances that make the construction of the unit inconsistent with Town policy. The Town, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit in the case of ~~Planned Unit development with an underlying zone of HR or~~ a residential development~~s~~ with five (5) to nine (9) units. Prior to approving the in-lieu fee alternative, the applicant must demonstrate to the satisfaction of the Town why a BMP unit cannot be (1) developed on the same site as the market rate units, and if it cannot be provided on the same site then, (2) develop at an appropriate off-site location within the Town limits. If the developer provides sufficient justification that both of these alternatives are not viable, then a fee in-lieu option may be considered. The required in-lieu fee is as established by a separate resolution and is to be paid to the Town prior to issuance of the certificate of occupancy for the market rate residential unit that triggered the BMP requirement. The provision for a BMP unit applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

The in-lieu fee shall be equal to the amount of six (6) percent of the building permit valuation for the entire project. The total building permit valuation shall be determined by the Town Building Official.

Fees shall be paid prior to or at time of final occupancy as follows:

1. Multi-Family Owner Occupied Developments: Prior to occupancy of each phase, a proportional amount of fees shall be paid, as determined during the Planning approval process.
2. Multi-Family Renter Occupied Developments: Prior to occupancy of each phase, a proportional amount of fees shall be paid, as determined during the Planning approval process.
3. Single-Family Planned Developments: At time of final occupancy for each unit.

E. Housing Fund: In-lieu fees will be deposited into the Town's Affordable Housing Fund. Applications and or recommendations for use of remaining funds will be reviewed as received. Possible use of the funds include, but is not limited to, the following:

1. Subsidizing the cost of owner occupied units to make them affordable to low/moderate income households
2. Purchasing rental units to make them affordable to low/moderate income households
3. Purchasing land for the future development of affordable housing
4. Developing affordable housing
5. Supplementing of affordable housing projects ~~developed through the Los Gatos Redevelopment Agency~~
6. Funding administration of the program, as approved by the Town Council in its annual budget process

F. Off-Site Construction: The Town Council may consider off-site construction of BMP units for continuum care facilities and for ~~Hillside Residential (HR) Zone District and~~ residential developments with five (5) to nine (9) units projects that have provided sufficient justification to the Town that an on-site BMP unit is not viable.

G. Phasing of the Construction of On- and Off-Site BMP Units: On- and off-site BMP units shall be constructed and Certificate of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town Council may grant an exception to these phasing requirements during the Planned Development project approval process for condominium conversion developments.

H. Affordability Agreement: The developer of "for sale" BMP units shall enter into an affordability agreement with the Town. The agreement will ensure that the BMP units are sold to qualified buyers and will be released by the Town through the escrow process once the BMP is sold to a qualified buyer.

III. Characteristics of BMP Units

A. Size of units: The size and design of BMP dwelling units ~~shall~~ should be reasonably consistent with the market rate units in the project. The Town and developer may negotiate regarding the size of units if more units than required are to be provided ~~under the Community Benefit requirements~~. BMP units should be provided proportionately in the same unit type mix (number of bedrooms) as the market rate units. In consideration of the household size of the households on the current program interest list, the Town and developer may negotiate to provide a greater proportion of a particular unit type. There ~~shall~~ should not be significant identifiable difference between the BMP and market-rate units visible from the exterior. The size and design of the BMP units ~~must~~ should be reasonably consistent with the market-rate units in the development.

B Location of units: BMP units shall be dispersed throughout the development, to the extent feasible; in all buildings, on each floor, and in each project phase. A concentration of BMP units in one location is not desirable and will generally not be allowed.

C. Finish of units: The external appearance of BMP units should be indiscernible to that of the market rate units in the project. The internal finish of BMP units should be identical to that of the market rate units in the project, except that the developer may request Town approval of substitutions for luxury interior finishes, appliances, or fixtures, if such substitutions do not violate any Town code requirement.

D. Project Facilities: All project facilities and amenities, including parking, must be available on the same basis to the BMP units as to the market rate units in the project, to the extent feasible~~.~~, unless the deciding body approves a reduction in parking for the BMP units.

IV. The BMP Unit Purchase Process; Buyer Selection, and BMP Unit Sale and Resale Procedures.

A. Owner Occupied Units

1. Applicant Eligibility

a. Household Income: In order to be eligible to purchase an owner-occupied BMP unit, an applicant's annual household income must be no greater than 100% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA). Household assets, such as real property, may also be considered in determining eligibility.

b. Housing Costs: In order to be eligible to purchase an owner-occupied BMP unit, an applicant must also demonstrate the ability to pay monthly housing costs. The monthly housing cost shall include the following factors:

1. unit price
2. current lending rates
3. estimated property taxes
4. estimated homeowner's private mortgage insurance (PMI) costs
   homeowners' association fees, if applicable
5. other expenses as determined necessary by the lender

c. Mortgage Financing: All persons must qualify for their own mortgage financing for the purchase of available BMP units without assistance from the Town. Qualifications must include the ability to pay taxes, insurance, closing costs and any homeowner association fees in addition to the mortgage. All loans used to purchase or refinance BMP units must be fixed rate and fixed term without balloon payments to minimize homeowners exposure to increased risks of mortgage default.

d. Required Down payment: A homebuyer shall have a minimum down payment that is equivalent to at least 10% of the BMP purchase price and is required to document the source of all down payment funds. The minimum 10% down payment is exclusive of any other supplemental down payment assistance grant or loan programs available from other agencies.

2. First Time Home Buyers: The Below Market Price (BMP) Program is for First Time Home Buyers. A First Time Home Buyer, by definition, is an applicant whose name has not appeared on a residential title in the counties covered by the Association of Bay Area Governments (ABAG) or Association of Monterey Bay Governments (AMBAG) which are Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma for at least three (3) years prior to application. Exception is made consistent with the Federal Housing and Urban Development (HUD) definitions (e.g. for people who were homeowners prior to a divorce, a displaced homemaker, a single parent who has only owned with a former spouse, a widow/widower of a veteran, etc.) and for tenants residing in a rental apartment proposed to be converted to a condominium or other common interest ownership prior to a Notice of Intent to Convert the development to an ownership residential unit.

B. Buyer Selection: A point system is used to establish a ranking of applicants for the purchase of an available unit. Applicants will be ranked according to total points and must have at least one point to be eligible to purchase a unit. In addition, applicant households must contain at least the same number of persons as the number of bedrooms in a unit, at the time of application, in order to be eligible to purchase that unit, if the unit contains three bedrooms or more.

All points are calculated per household, not for each individual within the household. For example, a household in which two members are senior citizens would receive six points for senior citizen status, not twelve points for two members having senior citizen status. Points are awarded as follows:

1. **Six points:**

a. Senior citizens who reside in the Town at the time of application and have lived in the Town for at least the prior two years. A senior citizen is defined as any person 62 years of age or older at time of application or married couples living together when at least one spouse is 62 years of age or older at time of application.

b. Senior Citizens who have lived in the Town for at least two years and have moved out of the Town within the last five years prior to the time of application.

c. Disabled persons who reside in the Town at the time of application and who have lived in the Town for at least the prior two years. The definition of “disabled” for the purpose of assigning points under this section shall be that used by the U.S. Social Security Administration for the purpose of determining eligibility for Social Security disability benefits.

d. Households required to relocate their residence as a result of Council action or mobile home park closure.

e. Regular Full-Time and Regular Part-Time Town employees as defined in the Town's Personnel Rules but excluding Los Gatos Monte-Sereno Police Officers, who have been employed by the Town for a period of no less than 12 months prior to the time of application.

f. Single heads of household with dependent children who reside in the Town at the time of application and have lived in the Town for at least the prior two years.

g. All licensed pre-school and public or private K-12 school employees of schools and districts geographically located in and serving the Town, and who have been employed in such capacity for at least one year at the time of application.

h. All certified emergency first responders (e.g. sworn police officers, fire fighters, and emergency medical technicians and paramedics) who have been employed in such capacity for at least one year at the time of application by an agency serving the Town.

2. **Four points:**

   a. Persons who live in the Town of Los Gatos at time of application and who have lived in the Town at least the prior two years.

   b. Persons who work in the Town of Los Gatos at time of application and have worked in the Town for at least the prior two years.

3. **Two points:**

   a. Households who have lived in the Town for at least 10 years and have moved out within the last ten years prior to the time of application.

   b. Household size is worth two points per person.

4. **One point:**

   a. Households who live or work within Santa Clara County at the time of application.

   b. Households with an annual household income at or below 60% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan

Statistical Area (PMSA).

5. A lottery will be used to rank each qualified applicant in the case of a tie.

6. Applicants are provided the opportunity to purchase available units in order of point ranking, from most points to least points. An applicant has two opportunities to refuse to purchase a unit before being removed from the current applicant pool.

7. Applicants who do not qualify for a particular project or who are not provided the opportunity to purchase a unit in a particular project shall retain their eligibility to apply for future projects.

8. An applicant must obtain pre-approval for a mortgage loan within one week after notification of eligibility to purchase a unit. The applicant must submit documentation of loan approval within three weeks of notification of eligibility to purchase a unit.

9. Exception to the Buyer Selection Process: An exception to the Buyer Selection Process may be granted to a resident of a rental apartment that is proposed to be converted to an "owner occupied" condominium or other common interest ownership development. In order to qualify for the exception, the resident must have resided in the rental apartment prior to the issuance of the Notice of Intent to Convert the development to an ownership project and shall meet the financial eligibility requirements to qualify for a BMP unit. The resident shall be provided first right of refusal, regardless of point ranking, for units in the following order:

   a. The unit they reside in if it is designated as a BMP unit.

   b. Any other available BMP unit.

C. <u>Determination of Initial Selling Price:</u> BMP units shall be priced to be affordable to households in two income categories: Median Income Households (those whose income is above 80%, but no greater than 100%, of the County Median Income); and Low Income Households (those whose income is above 50%, but no greater than 80%, of the County Median Income).

1. Fifty percent (50%) of the units in a project shall be priced to be affordable to Median Income Households; fifty percent (50%) shall be priced to be affordable to Low Income Households. Whenever the calculations result in fractional units, then the number of units priced to be affordable to Low Income Households shall be rounded up to the next whole number, and the number of units priced to be affordable to Median Income Households shall be rounded down to the next whole number, including zero (0). The following table applies this formula to projects with 1, 2, and 3 units:

Total Number of BMP Units in Project	Units Priced for Low Income Households	Units Priced for Median Income Households
1	1	0
2	1	1
3	2	1

The Town and developer may negotiate regarding the affordability mix of units, to fulfill a development's Community Benefit requirements.

The affordability level of a unit shall be for the purpose of setting the initial selling price only, and do not prevent its sale to any household eligible to purchase an owner-occupied BMP unit, as set forth in these Guidelines.

2. Annually, the Town shall set the initial unit sales price for each unit type (number of bedrooms), for each of the two income categories. These initial sales prices shall be set using the most recent Median Family Income (MFI) figures from the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA), and through the following calculations:

a. For units to be priced to be affordable to Median Income Households: the average of the 100% MFI annual income and the 80% MFI annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

Example: 100% MFI (4-person/4 bedroom) = $105,000

80% MFI (4-person/4 bedroom) = $75,700

Average MFI = ($105,000 + $75,700) divided by 2
= $90,350

Average MFI X Multiplier = Initial Sales Price

1. Assumptions of household size by size of unit are as follows:

Unit Size	Household Size
Studio	1
1 Bedroom	1
2 Bedroom	2

3 Bedroom	3
4 Bedroom	4

These assumptions of household size by size of unit shall be for the purpose of setting the initial sales price only, and do not prevent the sale of any unit to any household eligible to purchase an owner-occupied BMP unit, as set forth in these Guidelines.

b. For units to be priced to be affordable to Low Income Households: the average of the 80% MFI annual income and the 50% annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

Example: 50% MFI (4-person/4 bedroom) = $ 52,500

80% MFI (4-person/4 bedroom)= $75,700

Average MFI = ($52,500 + $75,700) divided by 2
= $ 64,100

Average MFI X Multiplier = Initial Sales Price

c. Calculation of Multiplier. A Multiplier shall be calculated, based on reasonable assumptions about unit sales prices, based on the most recent comparable sales of BMP units; current lending rates, as determined by the most recent Primary Mortgage Market Survey (PMMS) conducted by the Federal Home Loan Mortgage Corporation (Freddie Mac); and related costs; and using the following formula:

1. Determination of Total Housing Cost: Sample sales price - 10% down payment = mortgage. Annual debt service on mortgage + annual property taxes + annual homeowners fees + annual private mortgage insurance (PMI) = Total Annual Housing Cost.

2. Determination of Minimum Household Income: Assuming one-third of household income goes for housing expenses, Total Annual Housing Cost x 3 = Minimum Annual Household Income.

3. Determination of Multiplier: Sample Sales Price/Minimum Annual Household Income = Multiplier.

Copies of the initial sales prices, and the calculations made, shall be available on request from the Town's Community Development Department.

D. Deed Restrictions/Request for Notice: Council approved Deed Restrictions shall be recorded with each Below Market Price dwelling unit. In addition to the Deed Restriction, the Town shall also require that a Request for Notice for the benefit of the Town be recorded for each lender Deed of Trust record on title.

E. Resale of Units:

1. If the owner elects to sell his/her unit, the Town must be notified in writing by the owner.
2. When a Below Market Price dwelling unit becomes available for resale, the Town shall set the resale price and make the unit available for purchase through the BMP process.
3. The Town determines the resale price in accordance with the deed restriction recorded on the property.
4. The homeowner, as noted in the recorded Deed Restriction, is responsible for paying all closing costs (including commissions or fees).

F. Occupancy of Units:

Consistent with the deed restriction that will be recorded on the subject property, the household purchasing a BMP unit must occupy the unit as his or her primary residence during his or her ownership of said unit.

V. Requirements for BMP Rental Development

A. Administration: The program shall be administered by the Town or its designee.

B. Applicant Eligibility

1. Household Income: In order to be eligible to rent a BMP rental unit, a household's annual income must be no greater than 80% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA). Priority will be given to those households whose income is less than 50% of the MFI. Household assets may also be considered in determining eligibility.

2. Ability to Pay Rent: A tenant's ability to pay monthly rent will also be considered in determining tenant eligibility.

C. Tenant Selection: The property owner or manager of the development shall market the BMP unit(s), and solicit rental applications. Applications from tenants selected by property owner or manager will be forwarded to Town or designee for verification of income eligibility.

D. Management

1. BMP rental units shall be managed by the property owner or manager in the same manner as other units in the development.

2. Tenants of BMP rental units are eligible to receive conciliation and mediation services provided through the Town's Rental Dispute Resolution Program except as they regard rent increases.

E. Unit Rents: Rents may not exceed 80% of the most current Fair Market Rents as determined by the Santa Clara County Housing Authority.

F. Annual Review: If a tenant's income increases so that it falls between 80 and 100 percent of MFI, then the rent may be increased in accordance with the Town's Rental Dispute Ordinance; and the unit shall still be considered a BMP Rental Unit. However, if a tenant's income exceeds 100 percent of MFI, the rent may be increased to the average rent of similar units in the complex; in this latter case, the unit will no longer be a BMP unit and the next available unit that is comparable in size shall be designated as a BMP unit in its place, and must be rented to an eligible household so that the number of BMP units within the project remains the same.

G. Deed Restrictions: Council approved Deed Restrictions shall be recorded for each Below Market Price rental dwelling unit.

V1. RENTAL UNITS - NEW ~~SECOND~~ ACCESSORY DWELLING UNITS

A. Administration: The program shall be administered by the Town or its designee.

B. ~~Second~~ Accessory Dwelling Unit Incentive Program: 29.10.310 of the Town Code, may choose to participate in ~~the Second Unit~~ an Accessory Dwelling Unit Incentive Program ~~(SUIP)~~ as referenced in Section 29.10.320(a) of the Town Code and as set forth below.

1. The ~~SUIP~~ Incentive Program consists of a no interest construction loan to a property owner who intends to develop a new ~~second~~ accessory dwelling unit. The loan amount shall be determined based on the square foot construction cost as set forth in the current version Uniform Building Code as adopted by the Town for new construction and remodels. The loan amount will be calculated at 100% of the construction cost if the unit is income and rent restricted to serve households with incomes below 50% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development

(HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA), or 80% of the construction cost if the unit is income and rent restricted to serve households with incomes below 80% of MFI.

2. When a property owner participates in the ~~SUIP~~ Incentive Program, a deed restriction shall be recorded on the property. The deed restriction shall stipulate the rental rate, tenant income level, duration of affordability and loan repayment requirement as well as any other criteria as determined appropriate by the Town.

3. An ~~SUIP~~ Incentive Program loan to construct an ~~second~~ accessory dwelling unit within the Central Los Gatos Redevelopment Project area ~~shall be funded using Redevelopment Affordable Housing Funds and~~ shall remain affordable for 55 years. A ~~SUIP~~ Incentive Program loan to construct an ~~second~~ accessory dwelling unit outside the Central Los Gatos Redevelopment Project area shall be funded using BMP Program Funds and shall remain affordable for 30 years. The ~~SUIP~~ Incentive Program affordability restrictions as set forth in this section may only be amended by action of the Town Council.

4. A tenant's ability to pay monthly rent will also be considered in determining tenant eligibility. Applications from tenants selected by the property owner or manager will be forwarded to the Town or its agent for verification of income eligibility. Rental agreements shall be submitted to the Town or its agent to verify compliance with the provisions of this section. Tenants are eligible to receive conciliation and mediation services provided through the Town's Rental Dispute Resolution Program except as they regard rent increases.

5. Units targeted to households with incomes up to 80% of the Median Family Income (MFI) shall have rents restricted to 80% of Fair Market Rents as determined by the Santa Clara County Housing Authority. Units targeted to households with incomes up to 50% of CMI shall have rents restricted to 50% of Fair Market Rents as determined by the Santa Clara County Housing Authority. Tenant rents and incomes will be monitored annually.

TOWN OF LOS GATOS
COUNCIL POLICY COMMITTEE REPORT

MEETING DATE: 09/24/2019
ITEM NO: 5

DATE:	September 20, 2019
TO:	Council Policy Committee
FROM:	Laurel Prevetti, Town Manager
SUBJECT:	Discuss and Provide Direction on a Planning Grants Program Application

RECOMMENDATION:

Discuss and provide direction on a Planning Grants Program application.

BACKGROUND:

In 2017, Governor Brown signed a 15-bill housing package aimed at addressing the State's housing shortage and high housing costs. Specifically, it included the Building Homes and Jobs Act (SB 2), which establishes a $75 recording fee on real estate documents to provide a permanent source of funding, intended to increase the supply of affordable homes in California.

The legislation directs the Department of Housing and Community Development (HCD) to use 50 percent of the first year's revenue (January through December 2018) to establish a Planning Grants Program (PGP) that provides financial and technical assistance to local governments to update planning documents and land-use ordinances. A maximum award amount of $160,000 is available for localities with a population of less than 60,000 people. The application period is anticipated to end on November 30, 2019 (see Attachment 1).

The program provides grants through a noncompetitive, over-the-counter process to eligible local governments (cities and counties) who must: have an HCD-compliant housing element, have submitted a recent Annual Progress report, demonstrate a nexus to accelerating housing production, and demonstrate consistency with State Planning Priorities (Government Code Section 65041.1) or other planning priorities.

PREPARED BY: JOEL PAULSON
Community Development Director

Reviewed by: Town Manager and Town Attorney

110 E. Main Street Los Gatos, CA 95030 ● (408) 354-6832
www.losgatosca.gov

BACKGROUND (continued):

Applicants proposing activities in at least one of the Priority Policy Areas below are automatically deemed to demonstrate a nexus to accelerating housing production without any further documentation:

- **Rezone to Permit By-right**: Rezoning for significant additional housing capacity without or with lesser discretionary review or establishing zoning to permit residential development by-right, particularly multifamily, without discretionary action pursuant to Government Code Section 65583.2(h) and (i).
- **Objective Design and Development Standards**: Developing objective design standards or pre-approved site and architectural plans that facilitate non-discretionary permitting.
- **Specific Plans or Form based Codes Coupled with CEQA Streamlining**: Designating and rezoning for additional housing capacity or preparing specific plans or form codes that include zoning and development standards and plan-level environmental analysis that can be used to streamline future housing projects and facilitate affordability.
- **Accessory Dwelling Units or Other Innovative Building Strategies**: Encouraging ADUs and other innovative building types through actions above state law such as, outreach, fee waivers, pre-approved plans, website zoning clearance assistance, and other homeowner tools or finance tools. Also, establishing other approaches to intensify existing lower density residential areas and "missing model" typologies to encourage significantly more residential development (e.g., duplexes, triplexes) in lower density residential areas.
- **Expedited Processing**: Speeding up approvals and permit processing, including instituting programs that streamline or consolidate the review process or create a separate process for expedited review of housing projects.
- **Housing Related Infrastructure Financing and Fee Reduction Strategies**: Develop and implement approaches to local, regional or sub-regional housing related infrastructure financing. Create plans and programs to finance and increase infrastructure with accompanying enhanced housing capacity, such as enhanced infrastructure financing districts. Fee reduction and rationalization approaches, such as reassessing fees to adhere to best practices in reducing costs, deferrals, sliding scales or proportionate impacts fees (e.g., ADUs, transit oriented, and infill development, special needs housing), or fee transparency measures including publicly available fee calculators.

Staff looks forward to the Policy Committee discussion and direction regarding whether the Committee recommends the Town submit a Planning Grants Program application, and if so, in which Priority Policy Area activities should be proposed.

COORDINATION:

The preparation of this report was coordinated with the Town Manager's and Town Attorney's Offices.

Attachment:

1. Notice of Funding Availability – SB 2 Planning Grants Program

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF FINANCIAL ASSISTANCE
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2771 / FAX (916) 263-2763
www.hcd.ca.gov

March 28, 2019

MEMORANDUM FOR:	**All Potential Applicants**
FROM:	Zachary Olmstead, Deputy Director **Division of Housing Policy Development**
SUBJECT:	**NOTICE OF FUNDING AVAILABILITY - SB 2 PLANNING GRANTS PROGRAM**

The Department of Housing and Community Development (Department) is pleased to announce the release of this Notice of Funding Availability (NOFA) for approximately $123 million under the Senate Bill 2 (SB 2, 2017) Planning Grants Program (PGP). SB 2 established a permanent source of funding intended to increase the affordable housing stock in California. The legislation directs the Department to use 50 percent of the first year's revenue to establish a program that provides financial and technical assistance to local governments to update planning documents and land-use ordinances. The PGP is intended for the preparation, adoption, and implementation of plans that streamline housing approvals and accelerate housing production.

In order to be eligible for grant funding, an applicant must submit a complete, signed original application and an electronic copy on CD or USB flash drive. OTC applications will be accepted for an eight-month period ending on **November 30, 2019**. The Department will only accept applications through a postal carrier service that provides date stamp verification confirming delivery to the Department's office, such as the U.S. Postal Service, UPS, FedEx, or other carrier services. No facsimiles, late applications, incomplete applications, application revisions, electronic submittals, or walk-in application packages will be accepted. All applications must be submitted to the Department at the following address:

Department of Housing and Community Development
Division of Housing Policy Development
2020 West El Camino Ave, Suite 500
Sacramento, CA 95833

PGP applications and forms are available on the Department's website. Please refer to the Planning Grants Program Guidelines for detailed information on eligible activities, applicants, and awards. If you have questions regarding this NOFA, please email the Department at sb2planninggrant@hcd.ca.gov.

Attachment

PLANNING GRANTS PROGRAM (SB 2, 2017)
2019 NOTICE OF FUNDING AVAILABILITY

State of California
Governor Gavin Newsom

Alexis Podesta, Secretary
Business, Consumer Services and Housing Agency

Ben Metcalf, Director
Department of Housing and Community Development

Zachary Olmstead, Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development

2020 West El Camino Avenue, Suite 500
Sacramento, CA 95833
Telephone: (916) 263-2771
Website: http://www.hcd.ca.gov/grants-funding/active-funding/planning-grants.shtml
Email: sb2planninggrant@hcd.ca.gov

March 29, 2019

Table of Contents

2019 NOTICE OF FUNDING AVAILABILITY
SB 2 PLANNING GRANTS PROGRAM

I. Introduction

The Department is releasing this Notice of Funding Availability (NOFA) for approximately $123 million to make funding available to all local governments in California under the Senate Bill 2 (SB 2) Planning Grants Program (PGP). The PGP program is intended for the preparation, adoption, and implementation of plans that streamline housing approvals and accelerate housing production.

The PGP is authorized by Health and Safety Code sections 50470 et seq. (Chapter 364, Statutes of 2017, (SB 2)). Funding is subject to the December 2018 Planning Grants Program Guidelines (hereinafter referred to as the "Guidelines"), which includes detailed information on eligibility requirements, conditions, and procedures for awarding funds.

II. Program Summary

SB 2 (2017) is part of a 15 bill housing package aimed at addressing the state's housing shortage and high housing costs. Specifically, SB 2 established a permanent source of revenue intended to increase the affordable housing stock in California.

PGP grants are funded through 50 percent of the revenues collected during the first calendar year (January through December, 2018). The PGP program is a one-time component of SB 2 that, among other provisions, provides financial and technical assistance to local governments to update planning documents in order to:

- Accelerate housing production;
- Streamline the approval of housing development affordable to owner and renter households at all income levels;
- Facilitate housing affordability, particularly for all income groups;
- Promote development consistent with the State Planning Priorities; and
- Ensure geographic equity in the distribution and expenditure of allocated funds

The Department, in conjunction with the Governor's Office of Planning and Research, will provide technical assistance to localities pursuant to the provisions set forth in Article VII, Section 700(a) through (e) of the Guidelines. For further information, contact the Department at sb2planninggrant@hcd.ca.gov for details regarding local technical assistance.

Please refer to the Guidelines for other administrative provisions not summarized in this NOFA.

III. Program Timeline

Pursuant to Section 500(a) of the Guidelines, funds will be initially available to eligible applicants on a noncompetitive, over-the-counter (OTC) basis. Applications will be accepted over an eight-month period, commencing from the date of the release of this NOFA (Section 500(b) of the Guidelines). See Table 1 below for the projected timeline for awards for the initial OTC period.

Table 1: *Projected Timeline for Awards for OTC Applications*

Event	Date(s)
NOFA release	March 28, 2019
NOFA-Application Workshops / Webinar Period	April 1 - May 1, 2019
Final due date for OTC applications	November 30, 2019
Supplemental round	TBD
Anticipated end of grant term	June 30, 2022

The Department anticipates awards in 2-3 month intervals, depending on the volume of applications, and reserves the right to make adjustments to the projected timeline at any time. If OTC funds are not fully awarded at the end of the eight-month period, the Department may extend the final OTC application due date or consider a supplemental funding round (Section 500(g) of the Guidelines). During any supplemental round, top priority will be given to localities that have not submitted a previous request for funding. All other applicants may be subject to competitive scoring criteria during any supplemental round (Section 500(g)(2) of the Guidelines).

IV. Funding Available

The Department determined maximum award amounts for large, medium, and small localities, based on population estimates from the Department of Finance (DOF). Table 2 below shows the minimum and maximum awards available pursuant to Article IV, Section 400 of the Guidelines. Applicants can view maximum award amounts for all jurisdictions here.

Table 2: *Minimum and Maximum Award Amounts*

All Localities	Large Localities – Defined as ≥ 200,000 people	Medium Localities – Defined as 60,000 to 200,000 people	Small Localities – Defined as ≤ 60,000 people
Minimum award amount: **$25,000**	Maximum award amount: **$625,000**	Maximum award amount: **$310,000**	Maximum award amount: **$160,000**

For a link to the 2018 DOF Population Estimates, E-5, see: http://www.dof.ca.gov/Forecasting/Demographics/Estimates/E-5/

Applicants seeking partnerships with other local governments will be additive. For example, two large localities could submit a proposal for up to $1.25 million; three small localities up to $480,000, etc. Note: All applicants, including those who are forming partnerships, must submit separate, complete and signed application packages, pursuant to section X of this NOFA, to the Department in order to be awarded funds.

V. Eligible Applicants

Pursuant to Article II, Section 200 of the Guidelines, eligible applicants are limited to local governments, i.e., cities and counties. However, local governments may partner through legally binding agreements with other forms of governments or entities where the proposal will have a direct effect on land-use or development within the locality. This includes, but is not limited to, partnerships with other localities, regional governments, housing authorities, school districts, special districts, community based organizations, or any duly constituted governing body of an Indian Reservation or Rancheria.

Multi-jurisdictional partnerships between local governments are encouraged in order to coordinate with regional governments, leverage regional and state investment, promote consistency with the sustainable communities strategy, and affirmatively further fair housing.

Note: All localities must pass the Threshold Criteria as stated in section VIII of this NOFA. To ensure compliance with section VIII, all applicants, including those who are forming partnerships, must submit separate, complete and signed application packages, including resolutions, to the Department in order to be awarded funds.

VI. Eligible Activities

Applicants proposing Priority Policy Areas, as defined in section VIII of this NOFA, are automatically deemed to accelerate housing production without any documentation or demonstration to the Department.

Pursuant to Article III, Section 300 of the Guidelines, a variety of planning documents, planning activities and strategies, are considered eligible activities and must demonstrate a nexus to accelerating housing production, which may include:

(1) Updates to general plans, community plans, specific plans, local planning related to implementation of sustainable communities strategies, or local coastal plans;

(2) Updates to zoning ordinances;

(3) Environmental analyses that eliminate the need for project-specific review;

(4) Local process improvements that improve and expedite local planning;

(5) A smaller geography with a significant impact on housing production including an overlay district, project level specific plan, or development standards modifications proposed for significant areas of a locality, such as corridors, downtown or priority growth areas;

(6) The creation or enhancement of a housing sustainability district pursuant to AB 73 (Chapter 371, Statutes of 2017);

(7) Workforce housing opportunity zone pursuant to SB 540 (Chapter 369, Statutes of 2017);

(8) Zoning for by-right supportive housing, pursuant to Government Code section 65651 (Chapter 753, Statutes of 2018);

(9) Zoning incentives for housing for persons with special needs, including persons with developmental disabilities;

(10) Rezoning to meet requirements pursuant to Government Code Section 65583.2(c) and other rezoning efforts to facilitate supply and affordability;

(11) Rezoning for multifamily housing in high resource areas (according to Tax Credit Allocation Committee/Housing Community Development Opportunity Area Maps);

(12) Pre-approved architectural and site plans;

(13) Regional housing trust fund plans;

(14) SB 2 funding plans;

(15) Infrastructure financing plans;

(16) Environmental hazard assessments; data collection on permit tracking; feasibility studies, site analysis, or other background studies that are ancillary and part of a proposed activity with a nexus to accelerating housing production; and

(17) Other planning activities demonstrating a nexus to accelerating housing production.

Eligible activities may be part of a larger planning effort (e.g., a comprehensive zoning code update) if proposed activities have not been completed prior to the NOFA date, are distinct, and demonstrate a nexus to accelerating housing production.

As part of the PGP program, HCD, in coordination with the Governor's Office of Planning and Research (OPR), will work with a team led by Placeworks to provide technical assistance (TA) to applicants throughout the application period. The TA team will work closely with regions, sub-regions, and counties to help jurisdictions identify activities and provide tools that will accelerate housing production. For further information, contact the Department at sb2planninggrant@hcd.ca.gov for details regarding local technical assistance.

VII. Eligible Uses

Pursuant to Article III, Section 302 of the Guidelines, grant funds shall be used for the costs of preparing and adopting the proposed activity. Subcontracting is allowable under conditions set forth in Section 302(c) of the Guidelines. Pursuant to Section 302(b) of the Guidelines, grant funds may not be used for administrative costs of persons employed by the grantee for activities not directly related to the proposed activity. No more than 5 percent of the grant amount may be used for administrative costs for any proposed use, to be approved by the Department upon disbursement.

Only approved and eligible costs incurred for work after the NOFA date, continued past the date of the Standard Agreement, and completed during the grant term, will be reimbursable. Approved and eligible costs incurred prior to the NOFA date are ineligible

(Section 601(c) of the Guidelines).

Refer to Section 301 of the Guidelines for a list of all ineligible activities.

VIII. Threshold Requirements

In accordance with Article II, Section 201 of the Guidelines, all applicants must meet the following threshold requirements:

(1) **Housing element compliance:** The applicant must have a housing element that has been adopted by the jurisdiction's governing body by the date the applicant submits the application package, and is subsequently determined to be in substantial compliance with state housing element law pursuant to Gov. Code Section 65585 by the time of award. A jurisdiction's current housing element compliance status can be obtained by referencing the Department's website at http://www.hcd.ca.gov/community-development/housing-element/index.shtml or emailing the Department at sb2planninggrant@hcd.ca.gov. For more information on housing element requirements, please contact Paul McDougall at paul.mcdougall@hcd.ca.gov.

Pursuant to Section 201(a)(2) of the Guidelines, applicants not meeting housing element requirements may be considered to meet this threshold requirement at the discretion of the Department on a case by case basis by applying factors such as significant progress in meeting housing element requirements (e.g., a draft found to meet statute, rezoning near completion), proposing activities to meet housing element requirements (e.g., rezoning to accommodate housing needs pursuant to Gov. Code Section 65583(c)(1)) and adoption of a compliant element prior to the award of funds.

(2) **Annual Progress Report (APR) on the housing element**: The applicant must submit the APR to the Department, as required by Gov. Code section 65400, for the current or prior year by the date the applicant submits the application package.

(3) **Nexus to accelerating housing production**: The applicant must propose and document plans or processes that accelerate housing production. The application must demonstrate a significant positive effect on accelerating housing production through timing, cost, approval certainty, entitlement streamlining, feasibility, infrastructure capacity, or impact on housing supply and affordability. An application not utilizing Priority Policy Areas must include an explanation and documentation of the nexus plans or processes impact on accelerating housing production based on a reasonable and verifiable methodology and must utilize the Department's form (see Attachment 2 in the Application). A verifiable methodology may include a statement of support from a non-profit or for-profit developer that is active in the locality.

Applicants proposing Priority Policy Areas do not require a nexus demonstration and are automatically deemed to accelerate housing production without any documentation. Pursuant to Section 102(q) of the Guidelines, Priority Policy Areas means any of the following:

(a) Rezone to Permit By-right: Rezoning for significant additional housing capacity without, or lesser, discretionary review, or establishing zoning to permit residential development by-right, particularly multifamily, without discretionary action pursuant to Government Code Section 65583.2(h) and (i).

(b) Objective Design and Development Standards: Developing objective design standards or pre-approved site and architectural plans that facilitate non-discretionary permitting.

(c) Specific Plans or Form based Codes Coupled with CEQA Streamlining: Designating and rezoning for additional housing capacity or preparing specific plans or form codes that include zoning and development standards and plan-level environmental analysis that can be used to streamline future housing projects and facilitate affordability.

(d) Accessory Dwelling Units (ADU) or Other Low-Cost Building Strategies: Encouraging ADUs and other low-cost building types through actions above state law such as, outreach, fee waivers, pre-approved plans, website zoning clearance assistance, and other homeowner tools or finance tools. Also, establishing other approaches to intensify existing lower density residential areas and "missing model" typologies to encourage significantly more residential development (e.g., duplexes, triplexes) in lower density residential areas.

(e) Expedited Processing: Speeding up approvals and permit processing, including instituting programs that streamline or consolidate the review process or create a separate process for expedited review of housing projects.

(f) Housing Related Infrastructure Financing and Fee Reduction Strategies: Develop and implement approaches to local, regional or sub-regional housing related infrastructure financing. Create plans and programs to finance and increase infrastructure with accompanying enhanced housing capacity, such as enhanced infrastructure financing districts. Fee reduction and rationalization approaches, such as reassessing fees to adhere to best practices in reducing costs, deferrals, sliding scales or proportionate impacts fees (e.g., ADUs, transit oriented, and infill development, special needs housing), or fee transparency measures including publically available fee calculators.

Note: HCD will be rolling out best practice toolkits and technical assistance in these topic areas over the course of 2019.

Note: If the applicant is proposing only Priority Policy Areas ((PPA), as defined in section VIII, subsection (3) of the NOFA), do not fill out Attachment 2. However, if the applicant is proposing to fund PPAs AND other activities that are not considered PPAs, the application must demonstrate how these other activities have a nexus to accelerating housing production by filling out Attachment 2 of the application.

(4) **State Planning and Other Planning Priorities**: Applicants must demonstrate that the locality is consistent with State Planning or Other Planning Priorities.

Consistency may be demonstrated through activities (not necessarily proposed for SB 2 funding) that were completed within the last five years. Applicants must self-certify utilizing the Department's form (see Attachment 1 in the Application).

IX. NOFA Application Workshops

The Department will hold workshops and a webinar to review the PGP NOFA and application, and will be conducting technical assistance to aid applicants throughout the OTC period. For a list of dates, times, and locations for the workshops as well as information on technical assistance, please visit the Department's SB 2 Planning Grants webpage, or register here.

X. Application Submission Requirements

In order to be eligible for grant funding, an applicant must submit a complete, signed original application and an electronic copy on CD or USB flash drive. Applications will be accepted on an OTC basis for an eight-month period anticipated to end **November 30, 2019**. Note: All localities must pass the threshold criteria as stated in section VIII of this NOFA. To ensure compliance with section VIII, all applicants, including those who are forming or have formed partnerships, must submit separate, complete and signed application packages, including resolutions, to the Department in order to be awarded funds.

The Department will only accept applications through a postal carrier service that provides date stamp verification confirming delivery to the Department's office, such as the U.S. Postal Service, UPS, FedEx, or other carrier services. No facsimiles, late applications, incomplete applications, application revisions, electronically submitted, or walk-in application packages will be accepted. All applications must be submitted to the Department at the following address:

Department of Housing and Community Development
Division of Housing Policy Development / Land Use Planning Unit
2020 West El Camino Ave, Suite 500
Sacramento, CA 95833

Applications must be on Department forms and cannot be altered or modified by the applicant. Program applications and forms are available on the Department's website located at http://www.hcd.ca.gov/grants-funding/active-funding/planning-grants.shtml#forms.

XI. Application Review Process

Each application will first be reviewed for completeness, threshold eligibility requirements, and accuracy. In order to be considered complete, an application must contain all requested information and supporting documentation. All applications must also meet the eligibility and threshold requirements as specified in this NOFA and the

Guidelines. If the application is ineligible, it will not be considered for funding. Applicants may resubmit their applications prior to the November 30, 2019 deadline. All applicants not meeting the eligibility and threshold requirements will be informed within 60 days from the date the Department receives the application.

XII. Applicant Notification

Applicants will be notified within 60 days of the Department's receipt of their application regarding the status of their application and/or if any additional information is required (Section 500(e)) of the Guidelines). Applicants will receive an official letter of award after the Department approves funding recommendations (Section 500(f) of the Guidelines).

XIII. Award Letter and Standard Agreement

Successful applicants will receive an Award Letter from the Department and will be awarded funds through the Standard Agreement process that will specify, among other things, the amount of funds granted, timeline for expenditure of funds, and the approved use of funds. Expenditure report dates and other requirements will also be identified in the SB 2 Planning Grants Program Standard Agreement.

XIV. Appeals

(1) Basis of Appeals:

(a) Upon receipt of the Department's notice deeming an application incomplete or ineligible, applicants under this NOFA may appeal such decision(s) to the Director pursuant to this Section.

(b) No applicant shall have the right to appeal a decision of the Department relating to another applicant's eligibility, point score, award, denial of award, or any other related matter.

(2) Appeals Process and Deadlines:

(a) Process. In order to lodge an appeal, applicants must submit to the Director by the deadline set forth in subsection (b) below, a written appeal which states all relevant facts, arguments, and evidence upon which the appeal is based. No new or additional information will be accepted. Once the written appeal is submitted to the Director, no further information or materials will be accepted or considered thereafter. Appeals are to be submitted to the Director at following address:

Department of Housing and Community Development
Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, California 95833
sb2planninggrant@hcd.ca.gov

The Director will accept appeals delivered through a carrier service such as the U.S. Postal Service, UPS, Fed Ex, or other carrier services that provide date stamp verification of delivery. Deliveries must be received during the Department's weekday (non-state holiday) business hours of 9:00 a.m. to 5:00 p.m. Pacific Standard Time. Additionally, emails to the email address listed above will be accepted if the email time stamp is prior to the appeal deadline.

(b) Filing Deadline. Appeals must be received by the Director no later than (5) five business days from the date of the Department's determination.

(3) Decision:

Any request to amend the Department's decision shall be reviewed for compliance with the December 2018 Guidelines and the March 29, 2019 NOFA. The Director shall render his/her decision in writing within fifteen (15) business days of receipt of the applicant's written appeal. The decision of the Director shall be the Department's final decision, and shall not be appealable to any court or tribunal.

(4) Effectiveness:

In the event that the statute and/or guidelines governing the PGP program contain an existing process for appealing decisions of the Department with respect to NOFA awards made under such programs, this Section shall be inapplicable and all appeals shall be governed by such existing authority.

XV. Right to Modify or Suspend

The Department reserves the right, at is sole discretion, to suspend, amend, or modify the provisions of this NOFA at any time, including, without limitation, the amount of funds available hereunder. If such an action occurs, the Department will notify all interested parties and will post the revisions to the Department's website. You may subscribe to the Department's email list here: http://www.hcd.ca.gov/HCD_SSI/subscribe-form.html.