CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST
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Policy Analysis Report

To: Supervisor Ahsha Safai

From: Budget and Legislative Analyst's Office DY

Re: Vacancies in Below Market Rate Rental Units

Date: May 3, 2022

Summary of Requested Action

Your office requested that the Budget and Legislative Analyst conduct an analysis on the number of below market rate (BMR) rental vacancies across the City, including (1) how many BMR rental units are vacant; (2) how many total BMR rental units exist; (3) how long the BMR vacancies have been vacant; and (4) a discussion of how potential tenants are identified for placement in these units.

For further information about this report, contact Dan Goncher at the Budget and Legislative Analyst's Office.

Executive Summary

- As of April 4, 2022, there were 305 vacant Below Market Rate (BMR) rental units out of a total of 1,961 units in 101 buildings throughout San Francisco.[1]

- Of the vacant units, five (two percent) have been vacant since 2019, 55 (18 percent) have been vacant since 2020, and 245 (80 percent) have been vacant since 2021 or 2022. Sixty-nine percent of the vacant units are for households earning 55 percent or less of the area median income (AMI), and 30 percent are for households earning between 55 and 100 percent of AMI. Fifty-three percent of them are SROs, studios, or one-bedroom apartments, 44 percent are two-bedroom apartments, and three percent are three or more bedrooms.

[1] The Below Market Rate (BMR) program requires market-rate housing developers to provide deed-restricted affordable housing as part of their development. It is governed by Section 415 of the Planning Code.

- The Mayor's Office of Housing and Community Development (MOHCD) staff noted that there are currently several market-based challenges to renting BMR units. Specifically, smaller units are harder to rent in the current market because more potential renters want more space due to the COVID-19 pandemic. Additionally, some renters find that they can rent slightly larger units, or units in neighborhoods they prefer, for close to the same price as a BMR unit, especially if the BMR unit they qualify for is priced at 100 percent AMI.

- Prospective tenants for BMR units must apply online using the City's DAHLIA portal and anyone may apply.

- MOHCD requires that developers meet certain outreach and advertising requirements for their BMR units. Specifically, developers of BMR units must:
    - Hang a banner onsite during construction, which advertises the availability of future BMR units.
    - Advertise in five local publications, one of which must be in Spanish, Chinese, and Filipino print each, and one of which must target the African-American community.
    - Have a social media presence and advertise on streaming radio services.
    - Send flyers/postcards to all Certificate of Preference holders and Displaced Tenant Preference holders informing them of the availability of BMR units.
    - Send an email to the MOHCD listserv of over 50,000 recipients informing recipients of the availability of BMR units.
    - Send information to community organizations present in the development's supervisorial district for more targeted community outreach.

- According to MOHCD staff, the City has initiated enforcement actions on the 60 BMR units that have been vacant since 2019 or 2020. Enforcement begins when MOHCD sees, via the online DAHLIA portal, that it has been over 60 days since the developer or project owner last made progress on leasing the unit. To enforce the vacancy, first MOHCD sends a Notice of Complaint to the developer/owner. Then, if there is no response within 60 days, MOHCD sends a Notice of Enforcement. If there is no response to the Notice of Enforcement within 60 days, then MOHCD refers the case to the Planning Department. Planning sends a Notice of Violation and, if there is no response or appeal request within 16 days, then Planning assesses administrative penalties in the amount of $250 per unit per day. The entire enforcement process can take several months and some cases years to resolve.

Policy Options

The Board of Supervisors could:

1. Request that the Director of MOHCD provide regular reports to the Board of Supervisors, such as on a quarterly basis, through the end of FY 2022-23 detailing the number of BMR rental vacancies, location of such vacancies, the status of enforcement actions on such units, and the number and amount of fines issued to developers/owners of buildings with BMR rental units. This information could potentially be provided in an online dashboard format.

2. Initiate legislation to amend Planning Code Section 415 regulations for the enforcement of BMR rental vacancies. Such actions could include: (a) a reduction in the number of notices to developers with vacant BMR rental units before a fine is issued; (b) a reduction in the amount of time provided between notices or before a fine is issued; (c) an increase in the fine amount; and/or (d) shifting the responsibility of assessing administrative penalties to MOHCD.

3. Request the Director of MOHCD to conduct market research and/or an economic analysis to determine the cause of the trends in vacancies, including the challenges with renting smaller units and units targeted at higher AMIs. Any such research or analysis should be shared with the Board of Supervisors by October 1, 2022.

Project Staff: Dan Goncher, Anna Garfink

Background on the BMR Program

Since 1992, the San Francisco Planning Department has operated the City's Inclusionary Housing Program, also known as the Below Market Rate (BMR) program. The program is governed by Section 415 of the San Francisco Planning Code. The program requires market-rate housing developers to provide deed-restricted affordable housing as part of their development. The BMR program applies to both rental units and units available for ownership. Developers can meet this requirement in several ways, including:

- Build affordable units on-site;
- Build affordable units off-site;
- Pay a fee to the City (called an "in-lieu fee"); and
- In some cases, dedicate land that will be reserved for affordable housing.

Exhibit 1 below shows what developers of rental units are required to contribute to the program based on how many units their development includes.

Exhibit 1: 2022 BMR Rental Program Requirements by Size of Development

	10-24 Units	25+ Units
On-Site	14.5% of units must be reserved for households with incomes at or below 55% of Area Median Income (AMI)	• 12% at or below 55% AMI • 4.75% at or below 80% AMI • 4.75% at or below 110% AMI
Off-Site	20% of project units	• 18% at or below 55% AMI • 6% at or below 80% AMI • 6% at or below 110% AMI
In-Lieu Fee	$230.91 per square foot for 20% of project units	$230.91 per square foot for 30% of project units

Source: Planning Department's Inclusionary Affordable Housing Affidavit and Impact Fee Schedule

As of April 4, 2022, there were 1,961 BMR rental units in 101 buildings across the City. The Planning Department is responsible for working with developers to enforce Section 415 and confirm the number of BMR units the developer must build. The Mayor's Office of Housing and

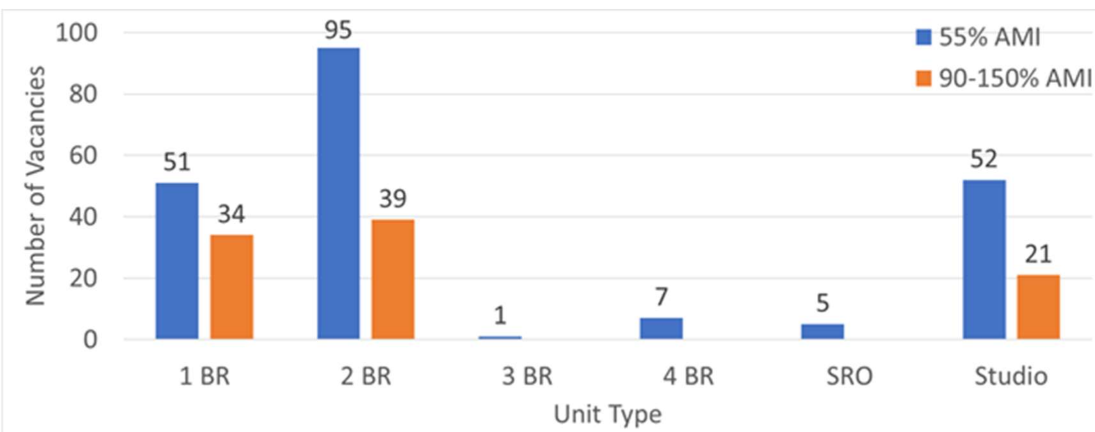
Community Development (MOHCD) is responsible for pricing the BMR units and overseeing the developer's marketing, application, and leasing processes.

Analysis of BMR Rental Vacancies

Current BMR Vacancies

As of April 4, 2022, there were five BMR units (two percent of the total vacancies) that have been vacant since 2019, 55 (18 percent of total vacancies) that have been vacant since 2020, and 245 units (80 percent of total vacancies) that have been vacant since between 2021 or 2022, **for a total of 305 vacant rental units.** Of these vacant units, 69 percent are reserved for households earning 55 percent of AMI, and 31 percent are reserved for households earning between 90-150 percent of AMI. 100 percent AMI for a single resident in San Francisco is currently $93,250, and 100 percent AMI for a family of four is $133,200. MOHCD determines AMI using the annual U.S. Department of Housing and Urban Development (HUD) Metropolitan Fair Market Rent Area that contains San Francisco.[2] Fifty-three percent of the vacant units are SROs, studios, or one-bedroom apartments, 44 percent are two-bedroom apartments, and three percent are three- or more bedroom apartments. Exhibit 2 below shows the breakdown of BMR rental vacancies by number of bedrooms and targeted AMI.

Exhibit 2: Number of Vacancies by Unit Type and Target AMI Level



Source: Mayor's Office of Housing and Community Development

For these 305 units, MOHCD received 58,271 duplicated applications, which represents approximately 21,000 applicants. According to MOHCD staff, prior to the pandemic there would be, on average, five applications to review to fill a unit. However, there are currently on average 31 applications to review to fill each vacant unit. MOHCD staff report that this is likely due to

[2] The current AMI is effective as of May 12, 2021. HUD's AMI determination for 2022 is expected in April or May 2022.

market-based challenges in renting BMR units, for example, that smaller units are harder to rent in the current market because more potential renters want more space due to the COVID-19 pandemic. Additionally, some renters find that they can rent slightly larger units, or units in neighborhoods they prefer, for close to the same price as a BMR unit, especially if the BMR unit they qualify for is priced at 100 percent AMI.

MOHCD Leasing Process and the Housing Lottery

According to MOHCD staff, the 245 units that have been vacant since 2021 or 2022 are all in the process of being leased. The leasing process can take several months and begins with the conclusion of the housing lottery. MOHCD uses a lottery process to identify residents for BMR units. The lottery process begins with an individual's application through the City's DAHLIA portal. The application is open to anyone that is within the income and household size requirements for the available unit and the only way to access it is through the online portal. Applicants must apply to each development's lottery separately and by the specified date.

For new developments, MOHCD runs the lotteries virtually by using a random number generator to assign each applicant a ranking. Then, applicants are filtered for preferences. The BMR program grants lottery preferences to San Francisco residents and some former residents, including displaced residents. After the lottery is run, applicants with a preference will be pulled from the general list and given priority.

Once lottery winners are identified, MOHCD sends the names of the applicants to the developers or, more typically, to the project owner, if the developer has already sold the building. According to MOHCD staff, the names are also available within a day on DAHLIA, so project developers/owners can typically begin outreach to lottery winners in lottery rank order immediately after the lottery concludes. Project developers/owners then review preference data for applicants, to ensure that the correct preferences are being applied (e.g., Certificate of Preference, neighborhood resident and live/work in San Francisco preferences) and they request documentation of proof of residency and income from applicants. This is part of a full packet of financial information that applicants must provide, including pay stubs and tax returns. If applicants do not provide the full package of documents or submit documents that require additional explanation, they are provided with a missing documents letter and five days to submit the remaining documents or information. The project developer/owner then uses an income calculator tool that MOHCD provides to confirm that the applicant meets income eligibility requirements and inputs this information into the leasing portal in DAHLIA. MOHCD checks the information for accuracy and sends approval to the developer to move forward with the application process.[3] Next, the project developer/owner is permitted to apply their own criteria to the applicants, such as minimum credit score or no at-fault evictions. If an applicant is denied based on any eligibility criteria, they have the right to appeal the denial decision within five days of being notified. Once MOHCD receives an appeal request from the developer/owner, they have an additional five business days to review and respond to the appeal. The developer/owner also completes a criminal background check that, per the Fair Chance Ordinance, applicants can have up to 14 days to appeal if they do not pass. The Human Rights Commission can take an additional 14 days to review a Fair Chance denial.

A typical leasing process takes one to two months from when an applicant wins the housing lottery to signing the lease on their unit. However, it can take even longer depending on how many units are in the development and how many staff the developer/owner has assigned to leasing. MOHCD staff reported that oftentimes in new buildings, an developer or owner's leasing agent will prioritize leasing market-rate units over BMR units, and if there is only one leasing agent, this means that it takes longer for the BMR units to get leased. Additionally, as noted above, it is currently taking longer to fill units because leasing agents must review more applications before securing a tenant who wants to lease the unit. Due to the number of applications to review and depending on the number of leasing agents, a new development with over 100 units could take a year to lease up entirely.[4] To address the issue of lengthy leasing times, MOHCD meets with developers of new buildings six to eight months prior to the start of leasing to recommend hiring specialized BMR leasing agents, and they also hold regular trainings for project developers/owners and leasing agents on BMR leasing.

Developers of new buildings must follow several MOHCD marketing requirements to publicize the availability of their BMR units. Developers must hang a banner onsite during construction advertising the future BMR units. They must advertise in five local publications, one of which must be in Spanish, Chinese, and Filipino print each, and one of which must target the African-American community. They must have a social media presence and advertise on streaming radio services. They must also send flyers or postcards to all Certificate of Preference holders and Displaced Tenant Preference holders. Additionally, MOHCD maintains an affordable housing email listserv of over 50,000 recipients that the developer must send information to. Developers must also send information to community organizations present in the development's supervisorial district for more targeted community outreach.

[3] In instances where the developer is familiar with the BMR program (i.e., it is not their first time documenting eligibility for BMR applicants) MOHCD will not review the information submitted in DAHLIA.
[4] MOHCD staff noted that this issue is not unique to the BMR program; nonprofit developers building 100 percent affordable housing also face long leasing periods.

MOHCD staff noted that the process for re-rental of BMR units is the same with the exception that neighborhood preference is not a required preference for re-rentals. MOHCD staff note that due to this difference, vacancies are generally filled within 60 days.

Vacancy Enforcement Process

The City has initiated enforcement actions for the five units that have been vacant since 2019 and the 55 that have been vacant since 2020. MOHCD works with the Planning Department to enforce the City's rules around BMR vacancies, which are defined in Planning Code Section 415. The developer or project owner must demonstrate through data inputs in the City's housing portal, called DAHLIA, that they are putting in effort to lease vacant units. These efforts could include verifying an applicant's lottery preference documentation, reviewing applications, and verifying applicants' qualifications.[5] According to MOHCD staff, developers and project owners are given ample technical assistance and training opportunities before and during the lease up process. If it has been over 60 days and it appears that the developer/project owner is not making progress leasing the unit, then MOHCD will initiate the enforcement process. To enforce the vacancy, first MOHCD sends a Notice of Complaint to the developer/project owner. Then, if there is no response or the violation is not corrected within 60 days, MOHCD sends a Notice of Enforcement. If there is no response to the Notice of Enforcement or the violation is not corrected within another 60 days, then MOHCD refers the case to the Planning Department. Planning sends a Notice of Violation and, if there is no response or appeal request within 16 days, then Planning assesses administrative penalties in the amount of $250 per unit, per day. The entire enforcement process can take several months and some cases years to resolve.

[5] The Dahlia portal can be found here: https://housing.sfgov.org/.

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