

CITY OF MOUNTAIN VIEW
RESOLUTION NO.
SERIES 2019

A RESOLUTION AMENDING THE BELOW-MARKET-RATE HOUSING PROGRAM
ADMINISTRATIVE GUIDELINES ASSOCIATED WITH THE
ORDINANCE AMENDING THE BELOW-MARKET-RATE HOUSING PROGRAM,
MOUNTAIN VIEW CITY CODE, SECTIONS 36.40 TO 36.40.70

WHEREAS, on September 12, 2017, the City Council initiated consideration of modifying existing rental and ownership housing policies and programs (BMR Program) with the goal of obtaining more affordable housing units instead of accepting payment of housing fees associated with new development; and

WHEREAS, on February 27, 2018, the City Council adopted modifications to the BMR Program, including requirements for rental development projects, modifications to in-lieu fee requirements, and alternative mitigations (BMR Phase I Modifications); and

WHEREAS, on May 14, 2019, the City Council initiated discussion of additional modifications to the BMR Program related to increasing the BMR ownership program, modifying the in-lieu fee and methodology, and adopting alternative mitigation parameters (BMR Phase II Modifications); and

WHEREAS, on May 31, 2019, the Environmental Planning Commission (EPC) held a duly noticed public hearing and recommended that the Council consider amendments to the City's Below-Market-Rate Ordinance and program, including administrative guidelines associated with the ordinance; and

WHEREAS, on June 18, 2019, the City Council held a duly noticed public hearing, considered the recommendations from the EPC, and approved amendments to the BMR Program with minor modifications; and

WHEREAS, on June 25, 2019, the City Council held a duly noticed public hearing and approved final amendments to the BMR program;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Mountain View that:

1. The Administrative Guidelines associated with the Ordinance Amending the Below-Market-Rate Housing Program, Mountain View City Code Sections 36.40 through 36.40.70, are hereby amended as shown in Exhibit A.

2. The effective date of this resolution shall be the same as the effective date of the Ordinance Amending the Below-Market-Rate Housing Program, Mountain View City Code Sections 36.40 through 36.40.70.

3. The City Council further directs and authorizes staff to make those changes necessary to the guidelines to ensure consistency and conform to the BMR ordinance.

KC/6/RESO
011-06-18-19r

Exhibit: A. Amended BMR Guidelines

**CITY OF MOUNTAIN VIEW
BELOW-MARKET-RATE HOUSING PROGRAM**

ADMINISTRATIVE GUIDELINES

ADOPTED BY THE MOUNTAIN
VIEW CITY COUNCIL ON
JANUARY 26, 1999

REVISED: MAY 14, 1999
REVISED: FEBRUARY 27, 2018
REVISED: JUNE 25, 2019

THIS PAGE INTENTIONALLY LEFT BLANK.

SECTION A: PURPOSE OF BMR HOUSING PROGRAM

The purpose of the Below-Market-Rate (BMR) Housing Program (Program) is to address the extraordinarily high cost of housing in the City of Mountain View by increasing the diversity and supply of affordable housing through the provision of mixed-income residential developments that integrate both market-rate and affordable units. The delivery of affordable housing and its integration with market-rate units are fundamental priorities of the Program, which facilitates inclusive, economically sustainable, and complete communities for a diverse range of families and households. Therefore, the basic, objective standard of the Program is the provision of affordable rental and ownership units on-site in compliance with the on-site requirements for BMR units. These Guidelines are issued pursuant to the City's Below-Market-Rate Housing Program (the "Program") found in Article XIV of Chapter 36 of the City Code. City Code Section 36.40.10(k) requires the City to adopt administrative guidelines necessary to implement the Program. Accordingly, these Guidelines are adopted to satisfy City Code requirements and are intended to be a source of objective standards and requirements under Government Code Section 65589.5(j) that are applicable to all residential developments in the City, unless otherwise specified by the Program or these Guidelines.

These Guidelines are consistent with the Program. The provisions of Article XIV of Chapter 36 of the City Code shall control to the extent any inconsistency with these Guidelines is identified. The Community Development Director may promulgate additional administrative procedures that are consistent with these Guidelines.

SECTION B: EFFECTIVE DATE

The provisions of the Program shall become effective as of August 24, 2019 and apply to all residential developments as defined in these Guidelines, except the following types of residential developments, which are exempt from the Program:

- a. Non-Gatekeeper projects with formal applications submitted by June 30, 2019, provided that, prior to August 24, 2019, applicants must submit all of the additional information as requested in the City's 30-day letter responding to the applicant's formal application submittal.
- b. "Gatekeeper" developments processed in accordance with City Code Sections 36.50.90, 36.52.20, and 36.52.55 and that have been deemed ready by December 20, 2019 for a public hearing regarding project approval.

SECTION C: DEFINITIONS

The following definitions shall apply to terms used throughout these Guidelines:

- “BMR unit” and “affordable unit” shall be used interchangeably in this document to describe a residential unit with an affordability deed restriction subject to the provisions of the Program.
- “Density bonus” means an approval of additional dwelling units, reduced parking, incentives and concession, or waivers of development standards under City Code Section 36.14 and Government Code Section 65915.
- “For-sale” and “ownership” shall be used interchangeably in this document to describe a residential development whose units are meant to be sold and subsequently owned by individual households.
- “Gross household income” *means the earned and unearned household income of all members of the household.*
 - “Area Median Income” (AMI) means the level of gross income for Santa Clara County as published periodically by the State Department of Housing and Community Development, generally defined as 100 percent of the area median income, adjusted for household size.
 - “Above Moderate-Income household” means the level of gross income for Santa Clara County between 120 percent and 150 percent of the AMI, adjusted for household size, as based on the 120 percent AMI level published periodically by the State Department of Housing and Community Development.
 - “Moderate-Income household” means the level of gross income for Santa Clara County as published periodically by the State Department of Housing and Community Development, generally defined as between 80 percent and 120 percent of the AMI, adjusted for household size.
 - “Low-Income household” means the level of gross income for Santa Clara County as published periodically by the State Department of Housing and Community Development, generally defined as between 50 percent and 80 percent of the AMI, adjusted for household size.
 - “Very Low-Income household” means the level of gross income for Santa Clara County as published periodically by the State Department of Housing

and Community Development, generally defined as less than 50 percent of the AMI, adjusted for household size.

- “Guidelines” means these Program Guidelines adopted by resolution under City Code Section 36.10.10(k).
- “Income category” means Moderate-Income, Low-Income, and Very Low-Income household as defined in this section.
- “Income level” means the income at a specified percentage of AMI, such as 65 percent AMI, 110 percent AMI, etc. Each income category is composed of various income levels. For example, 85 percent of AMI, 90 percent of AMI, 110 percent of AMI, etc., each represent various income levels within the Moderate-Income household category.
- “Off-site” means that the affordable housing units as required by the Program are not part of the same residential development and not integrated with the project’s market-rate units.
- “On-site” means that the affordable housing units as required by the Program are integrated with the project’s market-rate units and dispersed throughout the development according to the Program requirements. Except when required to develop senior housing in compliance with applicable laws, development of the affordable units in a separate, stand-alone structure, even if that stand-alone structure was on the same parcel or APN as a separate market-rate building, does not meet the definition of on-site.
- “Program” means the Program found in Article XIV of Chapter 36 of the City Code.
- “Rental” means any residential development that creates one or more additional dwelling units that cannot be lawfully sold individually in conformance with the Subdivision Map Act.
- “Residential development” means any development that includes an application to the City for planning or building permits to create one or more dwelling units, to convert nonresidential uses to residential uses, or to convert residential units from rental to for-sale. As used in these Guidelines, “residential development” includes, without limitation, rental housing; for-sale housing; mixed-tenure housing; mixed-use residential; detached single-family dwellings; duplexes; triplexes; multiple-family dwelling structures; condominium or townhouse developments; condominium conversions; and land subdivisions intended to be sold or rented to the general public. However, accessory dwelling units and

licensed care facilities are excluded from the definition of residential development.

SECTION D: GENERAL REQUIREMENTS

1. Objective Standard

All residential development is required to provide rental and ownership affordable units on-site or satisfy the requirements for an alternative compliance mechanism in accordance with the Program and these Guidelines.

2. Applicability

The provisions of the Program shall apply to all residential development as defined in these Guidelines, except those residential developments that are exempt under Section B of these Guidelines.

3. Size of Project

All residential developments as defined in the Guidelines shall be subject to the provisions of the Program. Residential developments with seven or more units, including ownership, rental, mixed-use, and mixed-tenure developments, shall be required to provide BMR units on-site. Residential projects with less than seven units shall have the option of paying a fee in lieu of the fractional affordable housing unit.

4. On-Site BMR Requirement

a. Rental: All nonexempt rental residential developments shall include at least 15 percent of the total number of rental dwelling units within the development as units affordable to Low- and Moderate-Income households representing income levels between 50 percent and 120 percent AMI as required by the Program and Guidelines.

The affordable rental units must be provided at a minimum of two income levels, with a resulting income level no greater than a weighted average of 65 percent of the AMI when considering all of the affordable rental units cumulatively. BMR rental units set an income level less than 50 percent AMI may count toward meeting the project’s BMR requirement provided that the BMR units cumulatively meet the AMI weighted average requirement.

The calculation of weighted average is as follows:

$$\frac{(AMI A)(\# \text{ of units @ } AMI A)}{\text{Total \# of affordable Units}} + \frac{(AMI B)(\# \text{ of units @ } AMI B)}{\text{Total \# of affordable Units}} + \text{etc.} \leq \frac{65 \text{ percent}}{\text{AMI weighted}}$$

- b. Ownership: All nonexempt ownership residential developments other than rowhouses and townhouses (as defined in Article IV of Chapter 36 of the City Code) shall include at least 15 percent of the total number of ownership dwelling units within the development as units affordable to Moderate-Income households making between 80 percent and 120 percent AMI as required by the Program and Guidelines. The affordable ownership units must be provided at a minimum of two income levels, with a resulting income level equal to a weighted average of 100 percent of the AMI when considering all of the affordable ownership units cumulatively. Rowhouses and townhouses in residential ownership developments shall be subject to a ~~125~~ percent on-site BMR requirement, with 15 percent at a weighted average of 100 percent, with a range of 80 percent and 120 percent AMI; ~~AND~~ ~~or~~ a ~~210~~ percent on-site BMR requirement at a weighted average of ~~135~~~~20~~ percent AMI with a range of ~~81~~~~20~~ percent and 150 percent AMI.

The City does not allow BMR ownership units set at an income level lower than 80 percent AMI to count toward a for-sale project's BMR requirements, unless a reserve is established that can be utilized by lower-income owners to fully pay for future expenses related to increases in homeowners association (HOA) fees or other assessments, such that the overall housing cost of homeownership is maintained at an affordable level.

The calculation of weighted average is as follows for all ownership projects and shall also apply to rowhouse/townhouse projects for the 135 percent AMI weighted average requirement applicable to that product type:

$$\frac{(\text{AMI A})(\# \text{ of units @ AMI A})}{\text{Total \# of affordable Units}} + \frac{(\text{AMI B})(\# \text{ of units @ AMI B})}{\text{Total \# of affordable Units}} + \text{etc.} = \frac{100 \text{ percent}}{\text{AMI weighted}}$$

- c. The BMR units at the various income levels shall be proportionately distributed among and representative of the various unit types within the overall development.
- d. The weighted average methodology provides flexibility to developers in the various income levels that they may choose. However, the determination of income levels shall meaningfully incorporate City input on desired income levels depending on the housing goals and priorities at the time, including, but not limited to, progress toward meeting the City's regional housing needs allocation (RHNA).

5. **Fees for Fractional Units**

A project with less than seven units may pay an in-lieu for fractional units. A project with seven or more units may pay an in-lieu fee when the BMR obligation results in a fractional BMR unit that is less than 0.5 (i.e., less than half a unit); ~~Aa~~ fractional unit equal to 0.5 or greater shall be rounded up and the project must provide one BMR unit on-site to satisfy the fractional obligation. The fee level shall be equivalent to providing the BMR units on-site and be based on a per net new habitable square foot amount as applied to the total project and as published in the Master Fee Schedule. Payment of an in-lieu fee for qualifying fractional units shall be made in full prior to issuance of the project's first building permit and the Community Development Director or designee shall be authorized to adjust the rental and ownership fees annually based on the Consumer Price Index (CPI), All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics. The fee levels shall be reviewed and updated as needed every five years.

6. **Location and Design of BMR Units**

All BMR units shall be reasonably dispersed throughout the residential development and consistent with Federal and State fair housing laws, have a distribution of units by number of bedrooms proportionate to the market-rate units, and be of comparable size based on net habitable square footage of the units, except that BMR units for seniors shall comply with applicable requirements for senior housing. The actual location of the BMR rental units within a complex shall be permanently assigned to a particular unit.

The exterior design of the BMR units shall be consistent with the market-rate units in the project and be comparable in terms of interior design, appearance, materials, and quality of finish. However, the BMR units may differ from market-rate units in the project by using lower-cost alternatives to certain amenities considered to be luxury items. For example, more expensive plumbing and lighting fixtures, hardwood floors, and marble entries may be considered luxury items, and less-expensive materials may be substituted. BMR units shall have access to all project amenities and recreational facilities available to market-rate units.

7. **Qualifying Households**

- a. All BMR rental units shall be rented only to qualified Low- or Moderate-Income households between 50 percent and 120 percent AMI, and all BMR ownership units shall be sold only to qualified Moderate-Income households between 80 percent and 120 percent AMI, except rowhouse/townhouse

projects could allow a household income up to 150 percent AMI if applicable per Section D.4.b. The City or its designee will maintain a waiting list of qualified persons.

- b. In addition to income limits, BMR ownership units are subject to asset limits. The assets of an owner of a BMR unit cannot exceed 30 percent of the purchase price of the BMR unit or \$150,000, whichever is lower, excluding funds dedicated to Federally recognized retirement programs. The maximum allowable down payment is 30 percent of the purchase price of the unit. All-cash purchases are not allowed. A 5 percent minimum down payment based on the purchase price is required; a minimum of 50 percent of the down payment must be the applicant's own funds; and a maximum of 50 percent of the down payment may be gifts. Income and assets of applicants will be verified by the City or its designee.
- c. BMR units shall be rented or sold based on income limits for a household size using the "bedrooms + 1" formula, and the minimum occupancy level shall be one person per bedroom, as follows:
 - Studios:
 - Housing cost based on 1-person household
 - Minimum occupancy is 1-person household
 - 1 bedroom:
 - Housing cost based on 2-person household
 - Minimum occupancy is 1-person household
 - 2 bedrooms:
 - Housing cost based on 3-person household
 - Minimum occupancy is 2-person household
 - 3 bedrooms:
 - Housing cost based on 4-person household
 - Minimum occupancy is 3-person household
 - 4 bedrooms:
 - Housing cost based on 5-person household
 - Minimum occupancy is 4-person household

An exception to the minimum occupancy standards shall be made if a reasonable accommodation is required.

- d. Preference is given to eligible applicants for a BMR unit if they live or work in the City of Mountain View, to the extent permitted by State or Federal law or other fair housing laws.

8. Determination of Rents for Rental Units

A residential development's BMR rental units shall have rents affordable to Very Low-, Low-, and Moderate-Income households (approximately between 50 percent and 120 percent AMI), with a cumulative weighted average of 65 percent AMI, and shall be based on the income level of the presumed household size that corresponds with the various unit sizes as stipulated in Section D.7.c.

The monthly rents are based on rental levels that do not exceed 30 percent of the selected income level for that unit and the presumed household size that corresponds with the various unit sizes as stipulated in Section D.7.c of the Guidelines, and a utility allowance shall be factored into the total housing cost. The eligible household income range may be adjusted annually to reflect adjustments in income categories published periodically by the State Department of Housing and Community Development for Santa Clara County.

9. Determination of Sale Prices for Ownership BMR Units

The purchase price of a residential development's BMR ownership units shall be affordable to Moderate-Income households (approximately between 80 percent and 120 percent AMI, except units in rowhouse/townhouse projects could go up to 150 percent AMI as applicable based on Section D.4.b), with a cumulative weighted average of 100 percent AMI (except rowhouse/townhouse projects shall comply with the weighted average requirements as applicable based on Section D.4.b), and shall be based on the selected income level for that unit and the presumed household size that corresponds with the various unit sizes as stipulated in Section D.7.c of these Guidelines. The eligible household income range may be adjusted annually to reflect adjustments in the median household income published periodically by the State Department of Housing and Community Development for Santa Clara County. The total monthly payment that shall not exceed 30 percent of the selected income level for that unit adjusted by unit size and presumed household size, and includes mortgage, taxes, utilities, HOA dues, insurance, and private mortgage insurance and the sales price shall be set accordingly. The monthly housing cost assumes a 5 percent down payment.

The developer shall set aside a reserve for households in BMR units sold for less than 80 percent AMI, and the reserve shall be described in the CC&Rs to cover future special assessments and increases in HOA dues for those households, such that the total housing cost will not exceed 30 percent of the household's selected

income level for the unit over the life of the mortgage. The Community Development Director or designee may establish standards for calculating the amount of the reserve.

10. Term

All BMR rental and ownership units shall be maintained as affordable housing according to the requirements of the Program in perpetuity.

11. Density Bonus

If an applicant requests a density bonus, the affordable units required by Density Bonus Law may count toward the project's on-site BMR requirement, provided that the units meet both the BMR Program's requirements and the requirements of Density Bonus Law. If the requirements of both programs are not met, the BMR Program may require that affordable units be provided in addition to the affordable units provided to qualify for a density bonus.

12. Rental Housing with Condominium Maps and Condo Conversions

Residential developments requesting a condominium subdivision map but that intends to rent the units initially instead of selling the units will be subject to the on-site BMR rental requirements. If an applicant requests payment of fees in lieu of providing units on-site, the applicant shall comply with the alternative mitigations in Section B and the Council shall have discretion in granting the request. The in-lieu fee amount shall exceed the rental in-lieu fee basis ~~of \$96.00 per net new habitable square foot as established in Section D.5 of these Guidelines~~ and as published in the Master Fee Schedule, and shall be paid in full prior to the issuance of the first building permit issue of the development.

If and when the on-site BMR rental units are converted to BMR ownership units, the BMR ownership units shall maintain the same level of affordability as the BMR rental units for those units initially rented between 80 percent and 120 percent AMI. For example, a BMR rental unit at 90 percent AMI shall remain affordable to a homeowner at 90 percent AMI when converted to a BMR ownership unit. BMR rental units at income levels between 50 percent and 80 percent AMI shall be allowed to: (1) maintain those lower affordability levels if a reserve is set aside for future special assessments and HOA increases to maintain the affordability of the unit; or (2) set those units at between 80 percent and 120 percent AMI, such that the cumulative weighted average for all BMR ownership units is 100 percent AMI. However, if a residential development is a density bonus project, converted units that were used to qualify the project for a density bonus shall continue to be affordable at the income level that qualified the

development for the density bonus and shall otherwise comply with the requirements of Density Bonus Law. Existing tenants in BMR rental units shall have right of first refusal to purchase a converted BMR unit and relocation payments shall be made according to the City's Tenant Relocation Assistance Ordinance if the tenant does not exercise their first right of refusal.

SECTION E: ALTERNATIVE MITIGATIONS

The basic objective standard of the Program is the creation of affordable housing integrated into market-rate residential developments. As an alternative to building the BMR units on-site, developers of market-rate residential developments may submit a request to meet their affordable housing obligations through other means, such as the dedication of land, the provision of other resources, payment of an in-lieu fee, or other alternatives.

The applicant has the burden to demonstrate that the request for an alternative mitigation satisfies the findings requirements; however, meeting the findings requirements does not constitute automatic approval of the alternative mitigation request. Such requests may only be granted if the City Council determines that such alternative will further affordable housing opportunities in the City to a greater extent than providing BMR units on-site based on the standards in these Guidelines and that the alternative mitigation is preferred to the on-site requirement. Prior to City Council approval of the requested alternative mitigation, the applicant shall demonstrate at least the following:

- The alternative mitigation requested exceeds the minimum affordability requirements of the Program by including deeper affordability, a greater number of BMR units, or both; and
- The alternative mitigation advances other City goals for housing as expressed by written guidance in administrative procedures as issued by the Community Development Director or designee regarding the specific income levels or residential product types desired by the City, including, but not limited to, housing needs based on income level and progress toward meeting the City's RHNA. Applicants must be consistent with any guidance in determining if the proposed alternative advances the City's goals for housing.

Furthermore, the applicant shall demonstrate compliance with additional requirements if one or more of the following alternative mitigations is requested:

- Dedication of land – The value of the dedicated parcel shall be greater than the value of providing the BMR housing units on-site. The minimum parcel size for a dedicated site shall be 0.75 acre of developable area and shall be reasonably able to accommodate more than the number of affordable units as would have been provided on-site. Developable area is defined as the site area exclusive of streets, sidewalks, and street or other public rights-of-way. The site shall have sufficient width and depth to permit the development of a greater number of BMR units that comply with applicable development standards than would be required if the units were provided on-site.

The dedicated site must be suitable for affordable housing development in terms of its configuration, physical and environmental characteristics, access, location, adjacent uses, and other relevant planning criteria, and the location shall not tend to cause or exacerbate residential segregation. The site must comply with the following:

- Environmental Compliance. The applicant must submit environmental conditions reports to the City, including, but not limited to, Phase I and Phase II reports, and must perform any necessary remediation identified by such reports on the site prior to transferring to the City.
 - Site Infrastructure. The applicant shall provide all infrastructure necessary to serve the units, including sewer, utilities, water, light, street access, roadways, and sidewalks on the site, and must meet all Precise Plan infrastructure, if applicable, and open space requirements. Alternately, the project applicant may provide funding to the City to complete all or a portion of the required infrastructure according to the NBAHP phasing and implementation strategy.
 - Special Conditions. The applicant must submit a comprehensive budget demonstrating that the dedicated site is not subject to any conditions when compared to the site of the residential development that would create higher cost burdens for affordable housing development (e.g., poorer soil conditions).
 - Site Condition. The dedicated site shall be delivered vacant and unimproved except for required utilities (without any existing buildings).
 - Timing of Land Dedication. The dedicated site must be transferred to the City prior to the issuance of the first building permit for the entire residential development.
- Development of affordable housing units off-site – An applicant may meet its on-site BMR requirement by developing the BMR housing units off-site. “Off-site” may mean another location within the market-rate project or on a separate parcel elsewhere. The off-site units shall be at least 20 percent of the total number of residential units for the residential development, defined as the combined total of the market-rate residential units and the off-site affordable housing units.
 - Location: The off-site location of the BMR units shall be in a location consistent with the City’s goals for housing as expressed in written guidance issued by the Community Development Director or designee.

- Suitability: The proposed BMR units must be deemed suitable by the City based on location, type of project, number of units/bedrooms, compliance with BMR requirements, adjacent uses, comparability to market-rate units, and other planning criteria.
- Timing of delivery: The off-site BMR units shall be completed and receive the Certificate of Occupancy no later than issuance of the Certificate of Occupancy for the market-rate units.
- Provision of fees in lieu of units – The in-lieu fee amount shall be greater than the value of developing the BMR units on-site; be paid by the applicant prior to issuance of the first building permit; and be higher than the per square foot levels stipulated in Section D.5 (“Fees for Fractional Units”). The applicant shall demonstrate why it is in the City’s interest to receive fees instead of on-site units, and considerations may include, but are not limited to: the ability for the in-lieu fees to create more affordable units and/or deeper affordability levels than could be provided on-site; the ability to create affordable housing for special-needs populations; helping 100 percent affordable housing projects in the City’s pipeline move forward that would not have otherwise been able to move forward or to move forward sooner than otherwise possible; and, if an applicant proposes an early or prepayment of in-lieu fees, the time value of such payment. If the residential development is constructed in multiple phases, the full amount of the in-lieu fee for the whole development shall be paid prior to issuance of the first building permit for the first phase.

An applicant may request an alternative mitigation composed of more than one strategy, such as providing a combination of BMR units on-site and fees in lieu of units, and would be required to demonstrate the merits of the request based on the parameters provided in this section.

SECTION F: TIMING OF DELIVERY OF BMR REQUIREMENTS

1. On-site BMR requirement—All BMR units in residential developments shall be constructed on-site concurrently with market-rate units. The Certificate of Occupancy for the BMR units shall be issued no later than the Certificate of Occupancy for the market-rate units.

In phased developments, the total BMR requirement shall be calculated on the basis of the whole development; each phase shall include the required number of BMR units based on the number of market-rate units in that phase; and on-site units shall be developed concurrently with the market-rate units in each phase. The Certificate of Occupancy for the BMR units shall be issued no later than the Certificate of Occupancy for the market-rate units in each phase. For a residential mixed-use project with one or more phases, the Certificate of Occupancy for the BMR units shall be issued no later than the Certificate of Occupancy for the market-rate units in each phase and prior to issuance of the Certificate of Occupancy for the nonresidential portion of the development.

2. Alternative mitigation—If an applicant requests an alternative mitigation and it is granted by the City Council, satisfaction of the residential development's BMR requirements shall occur based on the following:
 - a. Land dedication—The parcel shall be deeded to the City prior to issuance of the development's first building permit. For a phased project, the parcel shall be deeded to the City prior to issuance of the first building permit for the entire project. For a residential mixed-use project with one or more phases, the parcel shall be deeded to the City prior to the issuance of the development's first building permit, including if the first building permit is for a nonresidential use.
 - b. Build off-site—Entitlement and construction of the BMR off-site units shall occur concurrently with the market-rate project and at a minimum 20 percent BMR requirement. The BMR units shall be completed and receive the Certificate of Occupancy no later than issuance of the Certificate of Occupancy for the market-rate units. In phased developments, the total BMR requirement shall be calculated on the basis of the whole development, and the Certificate of Occupancy for the market-rate units in the first phase shall not be issued until issuance of the Certificate of Occupancy for the BMR off-site units.
 - c. In-lieu fees—Fees in lieu of providing on-site affordable units shall be paid in full prior to issuance of the project's first building permit. If an applicant wishes to pay the fee early and early payment would be of value to the City

per the requirements in Section E of these Guidelines, the timing of the early payment shall be determined between the applicant and the City. In phased developments, the total in-lieu fee amount shall be calculated on the basis of the whole development and paid in full prior to issuance of the project's first building permit. For a residential mixed-use development with one or more phases, delivery of the affordable housing obligation shall occur prior to the issuance of the development's first building permit, including if the first building permit is for a nonresidential use.

- d. Other – If an applicant requests an alternative mitigation not listed above, the general requirement is that the BMR requirement must be satisfied prior to issuance of the first building permit for any part of the entire development, including developments with multiple phases and/or are mixed-use.

SECTION G: ADMINISTRATION

1. BMR Waiting List

The City or its designee shall maintain a waiting list for BMR rental and ownership units. A separate set of procedures may be developed to implement the administration, maintenance, and oversight of the waiting list in accordance with the requirements of the Program, including determination of eligibility and placement of qualified households into available BMR units.

The property owner/management representative of rental units shall accept all tenants who meet their screening criteria and the City's BMR eligibility requirements, provided the screening criteria for BMR tenants is reasonable, is no stricter than for those tenants in market-rate units, and complies with State and Federal fair housing laws. In situations where potential tenants meet the BMR eligibility requirements but do not meet the screening criteria of the property owner/management representative, such as minimum credit scores or minimum income multiples of rent (for example, incomes that are three times the rent), the property owner/management representative shall have final discretion in the placement of those potential tenants but shall first work with the City/designee to review in good faith the ability to place those tenants in a BMR unit before disqualifying them.

2. Lease Agreement

Written lease agreements signed by both tenants and property owner/management representative shall be required for BMR rental units and shall have a minimum term of one year. Shorter lease terms are allowable if it is mutually agreeable between the tenant and the property owner/management representative. The property owner/management representative shall simultaneously notify the tenant and the City/designee a minimum of 60 days prior to the conclusion of an existing lease with an offer to renew the lease for the same term or different term that is mutually agreeable between the tenant and the property owner/management representative. If the tenant chooses to vacate the BMR unit instead of renewing the lease, the tenant shall provide written and signed notice to the property owner/management representative and the City/designee a minimum of 30 days prior to the conclusion of the lease.

3. Primary Place of Residence

Each tenant of a BMR rental unit or purchaser of a BMR ownership unit shall certify, prior to close of escrow in a form acceptable to the City/designee, that the unit being rented or purchased shall be the household's primary place of

residence, defined as occupancy for a minimum of 10 months in a calendar year. The household has the burden of proof to demonstrate that the BMR unit is the primary place of residence.

4. Subletting of BMR Units Prohibited and Hardship Provision

BMR units or rooms within a BMR unit, including BMR rental and ownership units, shall not be sublet for any duration of time. However, if the BMR tenant/owner experiences and can demonstrate a financial hardship, the unit or rooms within a unit may be rented or sublet at an “up-to” amount with prior approval from the Community Development Director or designee. Prior approval from the property owner/management representative to sublet a BMR rental unit shall also be required. In no event shall the hardship exemption exceed six months unless it can be demonstrated that the financial hardship is longer-term, nor shall subletting allow the BMR tenant/owner to earn a profit on the BMR unit by collecting rent that exceeds the affordable rent or affordable housing cost or that exceeds the balance of the affordable rent or affordable housing cost that the BMR tenant/owner is unable to pay after taking the financial hardship into account. Failure to comply with this provision shall subject the tenant/owner to penalties under Section G.7 of these Guidelines.

5. City’s Option, Resale Provisions, and Deed Restrictions

All BMR units shall be subject to deed restrictions, covenants, resale restrictions, and other applicable conditions and documentation to ensure compliance with the Program, and which includes an option that entitles the City or its designee the first right to purchase a BMR ownership unit at the lower of: (1) market value; (2) the purchase price paid by the seller, plus one-third of the increase (during the period of seller’s ownership) in a CPI, All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics; or (3) an amount equal to the price affordable to household earning the income level specific to the BMR unit. To qualify for an exception to the City-imposed restriction that the BMR unit be sold to a City-approved BMR household, the requesting party must demonstrate an inability to obtain a qualified buyer within a 180-day period and the City has determined not to exercise its option. If an exception is granted, the seller will be entitled to receive the lowest of sales prices as described in Items 1 through 3 above. The balance of the proceeds shall be paid to the City of Mountain View to be deposited in the City’s BMR Housing Fund. The deed restrictions will prohibit sales or transfers of the property except with the written consent of the City and at a price computed as above.

Owners of BMR ownership units shall provide the City/designee a notification of intent to sell prior to listing the unit. If an owner intends to refinance, change title, or transfer ownership of the BMR ownership unit, the owner shall notify and receive approval from the City/designee prior to initiating a refinance, title change, or transfer of ownership. The City is entitled to pursue all available remedies against an owner if an owner fails to notify and receive approval from the City/designee, including the City's exercise of its option to purchase the BMR ownership unit or a City action to foreclose on the BMR ownership unit under the City's deed of trust.

The BMR ownership deed restrictions and conditions shall contain such other provisions as are considered necessary by the City to implement the Program and the City may require that an additional notice or other document(s) be recorded. A reference to the deed restrictions and conditions shall be included in all deeds or conveyances of BMR units. Such deeds or conveyances shall be recorded in the County Recorder's Office, and a conformed copy shall be sent to the Community Development Department, City of Mountain View, P.O. Box 7540, Mountain View, California, 94039-7540.

6. Annual Verification of Eligibility

Annual verification of household eligibility for each BMR ownership and rental units shall also be conducted to ensure compliance with the Program's requirements, including primary place of residence, subletting due to financial hardship (if applicable), and any other applicable requirements.

Additionally, the income of each household of a BMR rental unit shall be verified at least annually by the City or its designee to confirm the household's continued eligibility for the unit:

- A household qualifying for a BMR rental unit with rents up to 80 percent AMI may earn up to 95 percent AMI for any BMR unit in this range and still remain in the unit. If a low-income household exceeds the 95 percent AMI threshold, the household has up to one year to transition out of the BMR unit.
- A household qualifying for a BMR rental unit with rents at greater than 80 percent AMI up to 100 percent AMI may earn up to 105 percent AMI for any BMR unit in this range and still remain in the unit. If a household exceeds the 5 percentage point threshold, the household has up to one year to transition out of the BMR unit.

- A household qualifying for a BMR rental unit with rents greater than 100 percent AMI up to 120 percent AMI may not become over-income for any BMR unit in this range. If a household exceeds the AMI level of the unit, the household has up to one year to transition out of the BMR unit. For example, a household that qualifies for a BMR unit with rents set at the 120 percent AMI affordability level can earn up to 120 percent AMI and still remain in the unit. Once the household earns above 120 percent of AMI, then the household has up to one year to vacate the BMR unit.

BMR households failing to cooperate in the annual review shall be subject to Section G.7 of these Guidelines.

7. **Compliance with Program Requirements**

Any individual or household that rents, purchases, or sells a BMR unit in violation of the Program requirements or the intent of the BMR Program shall be subject to penalties, and shall be required to forfeit all monetary amounts so obtained in excess of the permitted resale price or rental rates. Such amount shall be deposited in the City's BMR Housing Fund. Furthermore, violations of these provisions may result in civil or criminal prosecution. If the City/designee undertakes any enforcement action to obtain compliance with the requirements, the City/designee shall be entitled to recover its attorney's fees and staff costs for such enforcement effort.

8. **BMR Housing Fund**

A BMR Housing Fund is established for the deposit of all in-lieu fees, penalties, interest earnings, and all payments, including resale payments, made to the City under the Program. The purpose of the fund is to assist in providing affordable housing to very low-, low-, and moderate-income households and to cover administrative costs of the Program.

9. **Appeals Process**

Appeals of determinations based on the requirements of Section G of these Guidelines must be in the form of a written request by the appellant and be addressed to the Community Development Director. The Community Development Director or designee shall make the ruling and all rulings shall be final. The City may establish cost recovery fees for appeals.

10. **City Designee**

The City may enter into an agreement with one or more outside agency to administer and manage all or parts of the Program as the City's designee(s), including, but not limited to, the screening, selection, and placement of qualified households for the Program, asset management services, determination of appeals, and compliance and monitoring services.

WC/3/CDD
821-04-29-19G