

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
AMENDING MOUNTAIN VIEW CITY CODE SECTIONS 36.40.05,
36.40.10, 36.40.15, AND 36.40.20 TO MAKE CLARIFYING MODIFICATIONS,
AND ADDING SECTION 36.40.16 GOVERNING RENT INCREASES FOR BELOW
MARKET RATE UNITS TO THE MOUNTAIN VIEW CITY CODE

WHEREAS, the City of Mountain View (City) has adopted a Below-Market-Rate Affordable Housing Program (BMR Program) to address the housing needs of lower-income residents; and

WHEREAS, the BMR Program was updated in 2019 to include more opportunities for inclusionary units as opposed to fees; and

WHEREAS, the City's state-certified 2023-31 Housing Element includes Program 1.9 to review the BMR program to evaluate program efficacy and identify potential modifications to improve the program based on City goals and to present the review to Council in 2023; and

WHEREAS, on December 12, 2023, the City completed review of the BMR Program to meet the Housing Element requirement, including evaluating program efficacy; assessing potential improvements; and identifying modifications to better meet housing goals, including enhancing accessibility, mobility, and the diversity, supply, and affordability of housing; and

WHEREAS, as a result of the 2023 review, the City Council supported staff's recommendations to improve and enhance the BMR program, which included policy and program provision updates, clarifications, and clean-up items, and directed staff to further evaluate options related to alternative mitigations and physical accessibility of BMR units; and

WHEREAS, as a first step in implementing the goal of improving and enhancing the BMR program, staff recommends adoption of various amendments to Chapter 36, Article XIV (Affordable Housing Program) of the Mountain View City Code to clarify the definition of various terms, clarify the method for determining the rental rate for Below-Market-Rate (BMR) units, and to add a section governing rent increases on BMR units; and

WHEREAS, these modifications align with best practices, will improve and enhance the BMR Program, and furthers the City's commitment to providing affordable housing opportunities to its residents; now, therefore,

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapter 36, Article XIV, Division 1, Section 36.40.05, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by

~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

SEC. 36.40.05. Definitions.

For purposes of this article only, the following definitions shall be used in the interpretation and construction of this article.

- a. "Addition" shall mean an extension or increase in floor area of an existing nonresidential development project subject to this section.
- b. "Affordable housing" means housing which costs a very low-, low-, or moderate-income household no more than approximately thirty (30) percent of its gross monthly income. Costs included in the calculation of income for ownership housing are monthly mortgage principal and interest payments, homeowners' insurance, property taxes and homeowners association fees, where applicable. Costs included in the calculation of income allocated to rental housing are monthly rent and utilities.
- c. "Below-market-rate (BMR) unit" means an ownership or rental unit under the BMR program which is affordable to households with low or moderate incomes as defined in this chapter.
- d. "Density bonus" means an approval of additional dwelling units, reduced parking, incentives and concession or waivers of development standards under City Code Sec. 36.48.65 to 36.48.95 and Government Code Section 65915, et seq.
- e. "Existing floor area" means legally existing gross floor area at the time of application for a zoning permit or legally existing floor area that was demolished not more than one (1) year prior to the filing of the application for a zoning permit.
- f. "Gross floor area" means the floor area enclosed within the walls of a building and measured from the outside perimeter of said walls, expressed in square feet and fractions thereof.
- g. "Gross household income" means the earned and unearned household income of all adult members of the household:
 1. "Above-moderate-income household" means the level of gross income for Santa Clara County between one hundred twenty (120) percent and one hundred fifty (150) percent of the Area Median Income ("AMI") ~~AMI~~, adjusted for household size, as based on the one hundred twenty (120) percent AMI level published periodically by the state department of housing and community development.
 2. "Moderate-income household" means a household whose gross income as published periodically by the state department of housing and community

development is ~~between~~ greater than eighty (80) percent and up to one hundred twenty (120) percent of the median household income, adjusted for household size.

3. "Low-income household" means a household whose gross income as published periodically by the state department of housing and community development is ~~between~~ greater than fifty (50) percent and up to eighty (80) percent of the median household income, adjusted for household size, for Santa Clara County.
4. "Very low-income household" means a household whose gross income as published periodically by the state department of housing and community development is fifty (50) percent or less of the median household income, adjusted for household size, for Santa Clara County.
5. If the income limit index referenced in this section, or successor indexes, are no longer published by the state department of housing and community development, then a successor index shall be selected by the city manager. In selecting the successor index, the city manager shall choose an index published by a federal, state or county agency that most closely corresponds with the previous index.
- h. "Housing fund" means the City of Mountain View housing funds established pursuant to Sec. 36.40.40 and Sec. 36.40.60.
- i. "Housing impact fee" means the fee established pursuant to Sec. 36.40.55 for nonresidential development projects.
- j. "In-lieu fee" means a fee paid by a developer into the city's housing fund in place of providing the required below-market-rate units.
- k. "Market-rate unit" means a housing unit or the legal lot for such unit offered on the open market at the prevailing market rate for purchase or rental.
- l. "Mixed projects" shall mean projects containing both rental units and for-sale units.
- m. "Nonresidential development project" means the construction, addition or placement of a structure used for any commercial or industrial purpose as defined in Chapter 36 of the City Code and shall include the nonresidential portion of the gross floor area in a combined or mixed-use project.
- n. "Off-site" means that the affordable housing units as required by the BMR program are not part of the same residential development and not integrated with the project's market-rate units.
- o. "On-site" means that the affordable housing units as required by the BMR program are integrated with the project's market-rate units and dispersed throughout the

development according to the BMR 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 were on the same parcel or assessor's parcel number (APN) as a separate market-rate building, does not meet the definition of on-site.

- p. "Resale controls" mean legal restrictions by which the price of below-market-rate units and the eligibility of purchasers or renters shall be restricted to ensure that the unit remains affordable to moderate-income households.
- q. "Residential development" means any development that includes an application to the city for planning or building permits to 1) create one (1) or more dwelling units, 2) to convert nonresidential uses to residential uses, or 3) or to convert residential units from rental units to ownership units for sale. As used herein, and in the BMR 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, one hundred (100) percent affordable housing developments and licensed care facilities are excluded from the definition of residential development.
- r. "Zoning permit" means any of the several discretionary permits described in Chapter 36 of the City Code authorizing land uses, development, construction or alteration of uses or buildings within a zoning district.

SECTION 2. Chapter 36, Article XIV, Division 2, Section 36.40.10, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

SEC. 36.40.10. General requirements.

The words and terms used in this chapter shall have the meaning indicated as follows, unless the context clearly indicates otherwise:

- a. **Objective standard.** The basic requirement of the BMR program is the provision of BMR on-site and integrated with market-rate units for both rental and ownership projects.
- b. **Percentage requirement.** All residential development as defined in Sec. 36.40.05 are subject to the BMR program and shall provide at least fifteen (15) percent of the total number of dwelling units as affordable units.

1. **Ownership units.** 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 fifteen (15) percent of the total number of ownership dwelling units within the development as units affordable to moderate-income households making ~~between~~ greater than 80 (eighty) percent and up to one hundred twenty (120) percent AMI as required by the BMR program. The affordable ownership units must be provided at a minimum of two (2) income levels, a resulting income level equal to a weighted average of one hundred (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 twenty-five (25) percent on-site BMR requirement, with fifteen (15) percent at a one hundred (100) percent AMI weighted average with a range of units ~~between~~ greater than eighty (80) percent and up to one hundred twenty (120) percent AMI; and a ten (10) percent on-site BMR requirement at a one hundred thirty-five (135) percent AMI weighted average with a range of units between one hundred twenty (120) percent and one hundred fifty (150) percent AMI. The city does not allow BMR ownership units set at an income level lower than eighty (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.
 2. **Rental units.** All rental residential developments shall include at least fifteen (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 fifty (50) percent and one hundred twenty (120) percent AMI as required by the program and guidelines. The affordable rental units must be provided at a minimum of two (2) income levels, with a resulting income level no greater than a weighted average of sixty-five (65) percent of the AMI when considering all of the BMR rental units cumulatively, except as set forth in this article.
- c. **Size of project.** The BMR requirement shall apply to all new residential developments and applicable condominium conversions.
 - d. **In-lieu fees for fractions of units.** Residential projects with less than seven (7) units shall have the option of paying a fee in lieu of the fractional BMR unit. A residential project with seven (7) units or more may pay an in-lieu fee for fractional units when the BMR obligation results in a fractional BMR unit that is less than 0.5 (i.e., less than half a unit); and a fractional unit equal to 0.5 or greater shall be rounded up and the project must provide one (1) BMR unit on-site to satisfy the fractional obligation. 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 shall be based on the fee level

equivalent to providing the BMR units on-site and as published in the master fee schedule. 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.

- e. **Concurrent development of BMR on-site units.** All BMR on-site units in a residential development and phases of a development shall be constructed concurrently with or prior to the construction of market-rate units.
- f. **Location and design of BMR on-site units.** All BMR units shall be reasonably dispersed throughout the project 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 affordable units for seniors shall comply with applicable requirements for senior housing. The actual location of a BMR rental unit within a complex shall be permanently assigned to a particular dwelling 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. BMR units shall have the same access to project amenities and recreational facilities as market-rate units.

- g. **Qualifying households.** All BMR rental units shall be rented only to qualified low- or moderate-income households between fifty (50) percent and one hundred twenty (120) percent AMI, and all BMR ownership units shall be sold only to qualified moderate-income households ~~between~~ greater than eighty (80) percent and up to one hundred twenty (120) percent AMI, except households for rowhouses/townhouses shall qualify based on the BMR requirement as referenced in this Sec. 36.40.10. Rents, sales prices, and eligible household sizes of BMR units shall comply with the requirements pursuant to the BMR guidelines.

Preference is given to eligible applicants for a BMR unit if they live or work in the City of Mountain View. Preference will not be allowed if not permitted by state or federal law or other fair housing restrictions.

- h. **Term.** BMR units shall be maintained as affordable housing in perpetuity.
- i. **Density bonus.** Compliance with the provisions of this article may be applied towards a request for a density bonus, provided that the affordable units meet the stricter of the BMR program requirements and the density bonus law.

- j. **Administrative guidelines.** The city shall adopt, by resolution, BMR administrative guidelines (BMR guidelines) necessary for the implementation of the provisions of this article.
- k. **Administration.** The BMR program shall be administered by the community development department or its designee who may issue written procedures to implement the BMR program and guidelines.

SECTION 3. Chapter 36, Article XIV, Division 2, Section 36.40.15, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

SEC. 36.40.15. Determination of rents for BMR rental units.

The monthly rental rate for each BMR unit shall be based on the designated income level for the BMR unit and household size as established by the City of Mountain View BMR program administrative guidelines. The units shall be within the range of fifty (50) percent to one hundred twenty (120) percent of gross household income, with a cumulative weighted average of sixty-five (65) percent AMI, and be based on no more than thirty (30) percent of the qualifying tenant's gross household monthly income, according to the procedures set forth in the BMR program guidelines. The rent range of fifty (50) percent to one hundred twenty (120) percent of gross household income may be adjusted annually to reflect adjustments in the gross household income published periodically by the state department of housing and community development for Santa Clara County.

SECTION 4. Chapter 36, Article XIV, Division 2 of the Mountain View City Code is hereby amended to add Section 36.40.16 set forth below. Section titles are shown in **bold** font, additions are shown in underline font.

SEC. 36.40.16. Rent Increases for BMR Units.

The following provisions shall apply to rent increases on BMR units.

- a. The rental rate for an occupied BMR unit shall not be increased more than three percent (3%) within a twelve-month period. This provision shall not prohibit a landlord from increasing the rental rate on a vacant BMR unit more than 3% to align the rental rate with current applicable State Income Limits set by the Department of Housing and Community Development.
- b. The rental rate for an occupied BMR unit shall not be increased more than one time in a twelve-month period.

- c. A tenant shall be provided written notice of any increase in the rental rate for their unit no less the thirty (30) days prior to the effective date of the rent increase. The notice shall at a minimum include the new rental rate and the date the new rate will become effective. Written notice of a rent increase shall be hand-delivered to the tenant or served by U.S. mail in accordance with Section 1013 of the California Code of Civil Procedure. A tenant shall not be liable for any rent increase imposed without notice delivered in accordance with this subsection.
- d. A landlord who demands, accepts, receives, or retains any payment of rent in violation of this section shall be liable in a civil action to the tenant from whom those payments are demanded, accepted, received, or retained for all of the following:
 1. Injunctive relief.
 2. Damages in the amount of the rent demanded, accepted, received, or retained in violation of this section.
 3. In the court's discretion, reasonable attorney's fees and costs.

SECTION 5. Chapter 36, Article XIV, Division 2, Section 36.40.20, of the Mountain View City Code is amended to add, delete, or modify its provisions as set forth below. Section titles are shown in **bold** font, additions are shown in underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

SEC. 36.40.20. Determination of sale prices for BMR ownership units.

A project's BMR ownership units shall be sold at prices affordable to Moderate-income households ~~moderate-income households (approximately between eighty (80) percent and one hundred twenty (120) percent AMI)~~, with a cumulative weighted average of one hundred (100) percent AMI, except sales prices for rowhouses/townhouses shall be based on the BMR requirements for such developments as referenced in this Sec. 36.40.20, and ownership sales prices shall be based on the selected income level for each unit and the presumed household size that corresponds with the various unit sizes as set forth in the BMR 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 sales price for each BMR unit shall result in a total monthly payment that shall not exceed thirty (30) percent of the selected household 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.

For units sold ~~to households earning at~~ at less than eighty (80) percent AMI, the developer shall set aside a reserve and describe the reserve in the CC&Rs to cover future special assessments and increases in HOA dues for those households, and the total housing cost shall

not exceed thirty (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.

SECTION 6. CEQA. Pursuant to California Code of Regulations section 15060(c)(2), these code amendments are not subject to the California Environmental Quality Act ("CEQA") because they will not result in a direct or a reasonably foreseeable indirect physical change in the environment.

SECTION 7. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

SECTION 8. Publication. Pursuant to Mountain View City Charter section 522, at least two (2) days prior to final adoption of this ordinance, the City Clerk shall post the ordinance in three (3) prominent places in the City and publish in the City's official newspaper notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the ordinance are posted.

SECTION 9. Effective Date. Pursuant to Mountain View City Charter section 519, this ordinance shall become effective thirty (30) days after the date of its adoption.
