



# COUNCIL REPORT

**DATE:** May 12, 2026  
**CATEGORY:** Public Hearing  
**DEPT.:** Housing Department  
**TITLE:** **Code Amendment to Chapter 36 (Zoning)—Below Market Rate Housing Program (First Reading)**

## **RECOMMENDATION**

It is recommended that the City Council:

1. Introduce an Ordinance of the City of Mountain View Amending Chapter 36 (Zoning), Article XIV, Division 2 (Residential Development: Below-Market-Rate Housing Program) of the Mountain View City Code to Modify the Below-Market-Rate Program and Add Section 36.40.32 Governing Graduated Fee Reduction for Small Projects, and Finding that These Code Amendments are Not Subject to the California Environmental Quality Act, to be read in title only, further reading waived, and set a second reading for June 9, 2026, (Attachment 1 to the Council report).
2. Approve Relocating the Below-Market-Rate Housing Program Provisions in the Mountain View City Code from Chapter 36 (Zoning) to Chapter 46 (Housing) and Direct Staff to Bring Back Ordinance Amendments Before the End of 2026 for Council Consideration.

## **EXECUTIVE SUMMARY**

The City's State-certified 2023–31 Housing Element includes Program 1.9, which requires the City to evaluate the effectiveness of the Below Market Rate Housing Program (BMR Program) in 2023 and again in 2028. On December 12, 2023, City Council held a Study Session to complete the first required review, which concluded that the BMR Program is effective in increasing the supply and diversity of affordable housing. Council directed staff to further study potential modifications to enhance program effectiveness and return with recommended amendments.

In 2025, the City advanced a two-phase process to implement updates to the BMR Program. Phase One, focused on clean-up items, was approved by the Environmental Planning Commission (EPC) and City Council in February 2025. Phase Two amendments were reviewed by Council on November 4, 2025, at which time Council approved staff's recommendations and directed staff to return with Ordinance amendments through the public hearing process.

The Phase Two amendments include:

1. Increasing the physical accessibility of BMR units;
2. Establishing updated requirements for alternative means of compliance, including new acquisition/preservation options and Affirmatively Furthering Fair Housing (AFFH) provisions;
3. Updating the in-lieu fee methodology and amounts;
4. Completing remaining program clean-up items;
5. Removing the homeowner association (HOA) Reserve Fund requirement;
6. Adopting a graduated in-lieu fee reduction for small projects; and
7. Allowing administrative updates to the BMR Program Guidelines.

On March 4, 2026, the EPC held a Public Hearing and unanimously supported the Phase Two amendments, with two additional recommendations related to adding requirements for development partners in alternative compliance proposals and further evaluating locational criteria or other mapping tools to avoid concentration of lower-income households. The draft Ordinance amendments include criteria to determine "qualified development partner."

Staff evaluated other mapping tools after the EPC meeting and determined that the originally proposed "highest resource" opportunity map maximizes affordable housing sites and would generally not cause concentration of lower-income households. Modifications to the draft ordinance since EPC's review are highlighted in yellow in Attachment 1 to this report.

This report presents the Phase Two BMR Ordinance amendments for City Council's consideration and first reading, consistent with prior Council direction and EPC input.

**BACKGROUND**

The City’s Below Market Rate Housing Program was adopted in 1999 and underwent its first major update in August 2019. The BMR Program’s objective standard requires developers of market-rate housing to integrate affordable housing units **within the same building** as the market-rate units. Table 1 summarizes the key features of the BMR Program:

**Table 1: Summary of Current BMR Program**

Requirement	Criteria
Objective Standard	On-site BMR units integrated with market units.
Applicability	Any development that 1) creates one or more dwelling units, 2) converts nonresidential uses to residential uses, or 3) converts residential units from rental units to ownership units.
Project Size	<ul style="list-style-type: none"> <li>• Projects with 7 or more units: <ul style="list-style-type: none"> <li>– 15% BMR: rental or ownership (non-rowhouse/townhouse) projects.</li> <li>– 25% BMR: for rowhouse/townhouse projects.</li> </ul> </li> <li>• Projects with less than 7 units: fractional in-lieu fees for partial units.</li> </ul>
Affordability Levels	<ul style="list-style-type: none"> <li>• <b>Rental:</b> <ul style="list-style-type: none"> <li>– 15% BMR units at AMI greater than 50% up to 80% of <a href="#">Area Median Income</a> (AMI), with 65% AMI weighted average.</li> </ul> </li> <li>• <b>Ownership:</b> <ul style="list-style-type: none"> <li>– 15% BMR units at AMI greater than 80% up to 120% AMI, with 100% AMI weighted average (non-rowhouse/non-townhome projects).</li> <li>– Additional 10% requirement for rowhouse/townhouse projects at AMI greater than 120% up to 150% AMI, with 135% AMI weighted average.</li> </ul> </li> </ul>
Development Standards	<ul style="list-style-type: none"> <li>• BMR units comparable to market-rate units in size, location, and design.</li> </ul>
Duration	<ul style="list-style-type: none"> <li>• Affordable in perpetuity.</li> </ul>
Alternative Compliance <sup>1</sup>	<ul style="list-style-type: none"> <li>• Applicant may request alternative means of compliance.</li> </ul>

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<sup>1</sup> To date, the BMR Program has used the term “alternative mitigation.” Going forward, staff recommends using the term **“alternative means of compliance,”** which aligns with the term in Assembly Bill (AB) 1505, as codified in

Requirement	Criteria
	<ul style="list-style-type: none"> <li>• Council has discretionary approval.</li> <li>• Alternative compliance must be of greater value than onsite BMR units.</li> <li>• In-lieu fees, land dedication, off-site development of units, and catch-all option.</li> </ul>
Allowed Rent Increase	<ul style="list-style-type: none"> <li>• Maximum 3% annual increase.</li> </ul>

Housing Element Review

On [December 12, 2023](#), Council held a Study Session to review the efficacy of the City’s Below Market Rate Housing Program, meeting the City’s State-certified 2023-31 [Housing Element Program 1.9](#) requirement to complete the first of two reviews by December 31, 2023. The review included five criteria in the Housing Element as follows:

- **Criterion 1:** Continue BMR program, as revised in 2019, to include more opportunities for inclusionary units as opposed to fees.
  
- **Criterion 2:** Review BMR program to evaluate program efficacy and identify potential modifications to improve efficacy based on City goals, including furthering affordable housing production across unit types, special needs (including accessible units), and affordability levels.
  
- **Criterion 3:** Whether the BMR program facilitates mobility and access to opportunity and if any improvements could be made to increase mobility and access to opportunity.
  
- **Criterion 4:** Potential policy changes based on best practices, new laws, or unanticipated program outcomes.
  
- **Criterion 5:** Potential Cleanup in Guidelines/Policies/Procedures.

The review concluded that the BMR Program is effective in increasing the supply and diversity of affordable housing. Council approved staff’s recommendations to further study specific

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relevant part at California Government Code section 65850(g), that reaffirms the authority of jurisdictions to implement BMR programs.

amendments based on the Housing Element criteria that would enhance the BMR Program's efficacy, and to bring back recommended amendments for additional discussion prior to actual Ordinance amendments.

#### Two-Phase Ordinance Modification Process

**Phase One:** On [February 5](#) and [February 25, 2025](#), the EPC and City Council, respectively, held Public Hearings and approved the first set of BMR Ordinance amendments, which focused on Criterion 5 clean-up items plus one additional item clarifying the definition of "residential development." These amendments were necessary to advance the Housing Element requirements as expeditiously as possible by implementing the amendments that were ready and to enhance project reviews.

**Phase Two:** On [November 4, 2025](#), the City Council approved staff's recommended amendments for the remaining Housing Element evaluation criteria based on the direction given to staff in the December 2023 Study Session. This report focuses on implementing Council's direction for the Phase Two modifications. As will be discussed in greater detail below, the remaining seven amendments include:

1. Increase the physical accessibility of BMR units.
2. Add Requirements for Alternative Means of Compliance.
3. Update the in-lieu fee escalator and amounts.
4. Complete remaining program clean-up items, including a) allowing ownership projects to have a weighted average affordability of up to 100 percent AMI and b) updating the administering department to the Housing Department.
5. Remove the homeowner association (HOA) Reserve Fund requirement.
6. Adopt a graduated fractional in-lieu fee reduction for small projects.
7. Allow updates to the BMR Program Guidelines to occur administratively.

#### City Council Meeting Summary – November 4, 2025

Two members of the public spoke in support of the proposed updates to the BMR ordinance. Speakers expressed general support for the changes and encouraged the City to continue refining

its approach, including consideration of expanding the graduated fee exemption to 10 units to better align with recent state laws.

A written comment was also received recommending changes to the rowhome/townhome 25% requirement and other amendments that are not under consideration at this time.

Council unanimously approved staff's recommended modifications for Phase Two changes, and also directed staff to evaluate two additional items for the BMR ordinance modifications:

— **Additional Item 1:**

The motion included evaluating adjusting the graduated fee reduction to work proportionally with the maximum number of units physically possible for a project and to direct staff to evaluate the feasibility of incorporating the graduated fee reduction with maximizing the development potential of small sites, up to 10 units (SB 684, as codified in relevant part at California Government Code sections 65913.4.5 and 66499.41, and SB 1123, as codified in relevant part at California Government Code section 66499.41), and return to the Council with options.

— **Additional Item 2:**

Currently, the Administrative Guidelines stipulate that “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.” Council directed staff to evaluate the feasibility of including staff discretion in the BMR Administrative Guidelines to grant a developer acting in good faith to receive up to a six-month extension for delivery of the off-site BMR units if the developer is working in good faith. The intent of an extension is to recognize that off-site fully affordable housing developments are challenging to finance in today's economic environment and may not be feasible for the affordable development to be developed concurrently with the market rate units.

These additional items are discussed in further detail in the relevant sections below.

Environmental Planning Commission – March 4, 2026

Based on Council’s direction from its November 2025 meeting, staff drafted the BMR ordinance amendments and brought it forward to the EPC for consideration in a public hearing on March 4, 2026.

Three members of the public spoke in support of the City’s evaluation efforts while emphasizing the need to improve development feasibility. Speakers noted that high fees (not related to BMR fees) and construction costs in Mountain View can discourage housing production, particularly for smaller developers, and encouraged the City to consider additional incentives, such as extending fee exemptions to parks and other impact fees for projects up to 10 units and not just six units, aligning with State legislation (e.g., SB 684 and SB 1123), lowering the BMR requirement for rowhome/townhome projects (which currently have a 25% requirement), and providing greater flexibility in the timing and delivery of BMR units.

The EPC unanimously supported staff’s recommendations, with two additional recommended modifications related to alternative means of compliance. These included:

– **Additional Recommendation 1:**

Add provisions to ensure that development partners associated with alternative compliance proposals meet appropriate qualifications and performance standards.

– **Additional Recommendation 2:**

Conduct additional evaluation to ensure that off-site alternative compliance proposals do not contribute to the concentration of lower-income households within the City.

Detailed discussion and staff recommendations on each topic are provided in their respective sections of this report.

**ANALYSIS**

The following sections summarize each proposed amendment, including prior Council direction from its November 4, 2025 meeting, EPC’s recommendations from its March 4, 2026 Public Hearing, and the recommended ordinance changes for Council consideration.

### **Amendment 1: Increase the Physical Accessibility of BMR Units**

In the December 2023 Study Session, Council directed staff to identify options to improve the physical accessibility of BMR units to respond to Housing Element Criterion 2. After further study, staff found that approximately 13–18% of low-income households in California have a physical disability, and that existing state and federal building codes already require extensive accessibility features in designated “accessible” units of new residential projects.

Staff determined that adding local accessibility requirements beyond these standards is difficult due to wide variability in needs and costs, limited administrative capacity, and legal constraints such as AB 130, as codified in relevant part at California Health and Safety Code sections 17958, 17958.5, 17958.7, and 18941.5, which imposes stricter local building standards until 2031. Developers indicated that additional features would likely need to be optional and incentivized, though some voluntarily include or design “adaptable” units that can be modified later. Low-cost smart-home features can also be installed by residents themselves.

**Council Direction (November 2025):** In its November 2025 meeting, Council supported staff’s recommendation of amending the BMR Ordinance to require that 15% of the total BMR units in a project or one (1) BMR unit, whichever is greater, be part of a project’s overall number of units that are designated as “accessible.” This approach improves access to BMR housing without imposing additional local building code requirements.

**EPC Recommendation (March 2026):** The EPC supported staff’s recommendation without modification.

**Tonight’s Recommendation:** Staff recommends no changes to the November 2025 Council direction for this amendment and recommends adoption of the provision **as incorporated into Section 36.40.10(I)** of the proposed Ordinance.

### **Amendment 2: Add Requirements for Alternative Means of Compliance**

Amendment 2 establishes updated requirements for applicants proposing alternative means of compliance in lieu of providing on-site BMR units. These changes respond to Housing Element Criteria 3 and 4 and are intended to align the BMR Program with State requirements, improve clarity, and ensure applicants provide sufficient information for efficient review under State streamlined timelines.

At the December 2023 Study Session, Council directed staff to refine the allowable alternative compliance options. Council retained land dedication and off-site development, removed in-lieu fees and the “catch-all” option, and added acquisition/preservation of existing housing units (including those subject to CSFRA). This results in three allowable options: land dedication, off-site development, and acquisition/preservation. Council also affirmed that alternative compliance should apply to both rental and ownership projects.

Based on Council direction from November 2025, the following general requirements apply to all alternative compliance projects:

- Require submittal of a comprehensive Below Market Rate Compliance Plan with the initial development application, including a detailed description of the proposal, pro forma, financing plan, feasibility analysis, equivalency analysis, and supporting documentation.
- Require a finding that the proposed alternative compliance provides value equivalent no less than the cost of providing on-site BMR units.
- Require a finding that the proposed alternative compliance supports Affirmatively Furthering Fair Housing (AFFH) by promoting access to opportunity.
- Require a finding that the applicant will provide sufficient financial resources to successfully deliver the alternative compliance project, including land value (if applicable) and any additional funding needed.
- If a partnership is proposed, require demonstration that financial responsibilities are appropriately allocated and that the applicant does not shift market-rate project costs to the affordable housing partner or receive compensation for obligations it would otherwise bear.

These general provisions have **been incorporated into Section 36.40.30 (a)**.

As previously directed by Council, a cost-recovery fee applies to alternative compliance proposals to reflect the additional staff resources required for review. The FY 2025–26 fee is \$32,000 and will be adjusted annually based on CPI.

***Specific Amendments for Land Dedication Option***

In addition to the above general requirements, Council approved the staff-recommended requirements specifically for the land dedication option as summarized in Table 2 below.

New/updated criteria are identified in **bold** text and have been **added to Section 36.40.30 (b)**.

**Table 2: Criteria for Land Dedication Proposals**

<b>Standard</b>	<b>Requirement</b>
Parcel Size and Capacity (Existing - no changes)	<ul style="list-style-type: none"> <li>- The site being dedicated must be a minimum parcel size of 0.75 acres, and be of a suitable size to accommodate the number and distribution of BMR units that would have been required for the site with market-rate units.</li> </ul>
<b>Location (NEW)</b>	<p><b>At least one of the following must be true for the site being dedicated:</b></p> <ul style="list-style-type: none"> <li>- <b>Site is identified as a Housing Element Opportunity Site</b></li> <li>- <b>Site is within 0.5 mile of the underlying project.</b></li> <li>- <b>Site is located south of El Camino Real.</b></li> <li>- <b>Site is included in the El Camino Precise Plan.</b></li> <li>- <b>Site is located in an area designated by the California Department of Housing and Community Development-as a “Highest Resource Area.”</b></li> </ul>
Environmental Conditions (Existing – no changes)	<ul style="list-style-type: none"> <li>- Applicant must submit environmental conditions reports, including but not limited to Phase I and Phase II environmental site assessments as applicable, and</li> <li>- Applicant must complete any necessary remediation to make the site suitable for residential development prior to conveyance of the land.</li> </ul>
Special Conditions (Existing – no changes)	<ul style="list-style-type: none"> <li>- Applicant must submit a comprehensive budget demonstrating dedicated site is not subject to any conditions when compared to the site of the primary market-rate residential development that would create higher cost burdens for affordable housing development (e.g., poorer soil conditions).</li> </ul>
Site Infrastructure (Existing – no changes)	<ul style="list-style-type: none"> <li>- Applicant shall provide or fund all infrastructure necessary to serve the site—including utilities, streets, sidewalks, and lighting up to the border of the dedicated parcel —and be consistent with any applicable Precise Plan standards.</li> </ul>
<b>Cost Recovery (NEW)</b>	<ul style="list-style-type: none"> <li>- <b>Applicant shall pay a fee as set forth in the City’s master fee schedule based on the City’s costs for construction of BMR units</b></li> </ul>

Standard	Requirement
	<b>on the dedicated site as would have been required for the site with market-rate units.<sup>2</sup></b>
Timing of Land Dedication (existing)	– Dedicated site and any required contribution must be transferred to the City prior to the issuance of the first building permit for the underlying project.

***Specific Amendments for Off-Site Development***

Table 3 below summarizes the new or amended criteria that applicants must meet for the off-site development option. These amendments were informed by learnings from projects that have included off-site development of BMR units, such as The Sevens and 685 W. Middlefield Road. New/updated criteria are identified in **bold** text and have been **incorporated into Section 36.40.30 (c)**.

**Table 3. Criteria for Off-Site Development Proposals**

Standard	Requirement
<b>Location (updated)</b>	<p><b>At least one of the following must be true for the site of the off-site BMR units:</b></p> <ul style="list-style-type: none"> <li>– <b>Site is identified as a Housing Element Opportunity Site</b></li> <li>– <b>Site is adjacent to underlying project (same or separate parcel are both permissible).</b></li> <li>– <b>Site is within 0.5 mile of the underlying project.</b></li> <li>– <b>Site is located south of El Camino Real.</b></li> <li>– <b>Site is included in the El Camino Precise Plan.</b></li> <li>– <b>Site is located in an area designated by the California Department of Housing and Community Development (HCD) as a “Highest Resource Area.”</b></li> </ul>
Suitability (existing - recommend deleting)	<p><del>The proposed BMR units must be deemed suitable by the City based on</del></p> <ul style="list-style-type: none"> <li><del>— location,</del></li> <li><del>— type of project,</del></li> <li><del>— number of units/bedrooms,</del></li> <li><del>— compliance with BMR requirements,</del></li> <li><del>— adjacent uses,</del></li> <li><del>— comparability to market rate units, and</del></li> <li><del>— other planning criteria.</del></li> </ul>
<b>Access to Amenities (NEW)</b>	<b>If any portion of any of the off-site BMR units is located within 750 feet of the underlying project parcel boundary, residents of all off-site</b>

<sup>2</sup> This cost recovery contribution has already been implemented as part of the Fiscal Year 2025-26 Master Fee Schedule update and is currently \$950,000.

Standard	Requirement
	<b>BMR units must be granted access to shared amenities located on the underlying project parcel.</b>
<b>Unit Requirement (updated)</b>	<p>The off-site BMR units shall meet the same requirements for percentage requirement, design of BMR units, qualifying households, term, and accessible or adaptable units as those provided in the underlying project.</p> <p>The off-site BMR units shall have proportionally the same mix of bedroom counts (studios, one bedroom units, two bedroom units, etc.) as the market-rate units, except the BMR units shall be permitted to include more bedrooms than the market-rate units.</p>
Special Conditions	Applicant will submit a financing plan that confirms no financial contributions will be required from the City.
<b>Off-Site Partner (NEW)</b>	<p><b>If the applicant opts to partner with another entity, the Compliance Plan must include:</b></p> <ul style="list-style-type: none"> <li>– The applicant’s financial contributions.</li> <li>– The terms offered to the partner.</li> <li>– The process for partner selection.</li> <li>– The structure of the agreement that forms the relationship between applicant and the partnering entity.</li> </ul>
<b>City oversight of partnership (NEW)</b>	<b>If the applicant elects to select a partner through a Request for Proposals (RFP) process, City may review the RFP to confirm compliance.</b>
<b>Applicant’s partner - minimum threshold requirements (NEW)*</b>	<p><b>If the applicant elects to partner with an entity to undertake the off-site development, that partner shall meet all of the following requirements:</b></p> <ul style="list-style-type: none"> <li>– The partner shall have verifiable experience developing at least three affordable housing projects within the last ten years that are similar in size, scale, tenure, type, target population, and overall physical and financial complexity to the proposed project.</li> <li>– In the past 10 years, the partner shall not have been subject to any adverse judgment or enforcement action by a public entity in connection with development activities, housing or public contracting.</li> <li>– The partner must not have filed for bankruptcy within the past 10 years.</li> <li>– In the past 10 years, that partner must not have been involuntarily removed from an ownership or controlling interest in any publicly-funded development project.</li> <li>– In the past 10 years, the partner shall not have been debarred or considered for debarment, suspended, declared ineligible, or</li> </ul>

Standard	Requirement
	<b>excluded by any local, state or federal department or agency from participation in government funded programs or contracts.</b>
<b>Timing of delivery (updated)**</b>	– The off-site BMR units shall be constructed and receive the Certificate of Occupancy for all units no later than issuance of the first Certificate of Occupancy for any use in the underlying project, <b>unless an alternative timeframe is approved by the final decision-making body to ensure that the BMR units are constructed prior to the final Certificate of Occupancy for the market-rate units.</b>

\*Added per EPC recommendation from its March 4, 2026 Public Hearing

\*\* Flexibility added per City Council recommendation from its November 4, 2025 meeting

***Specific Requirement for Acquisition/Preservation***

The acquisition and preservation of existing housing units and their conversion into deed-restricted affordable housing is an allowable alternative compliance option under State law. In December 2023, Council directed staff to add this option and evaluate how to structure the program.

Staff reviewed acquisition and preservation options in BMR Programs implemented in comparison jurisdictions to identify best practices, options, feasibility, and financing approaches to inform recommendations for Council consideration.

Additionally, staff reviewed the preservation and conversion of 660 Mariposa, which is covered under the City’s rent stabilization program, into permanent deed-restricted affordable housing to satisfy the BMR requirements of the market-rate development at 1720 Villa Street (now known as The Tillery). Table 4 summarizes staff recommendations for this new alternative compliance option. **The entire table is bold because Acquisition/Preservation is a new option.** These criteria have been incorporated into Section 36.40.30 (d).

**Table 4: Requirements for New Acquisition/Preservation Option**

Standard	Requirement
<b>Eligibility (NEW)</b>	<b>The units to be acquired must be existing residential units located on a different site than the underlying project and not be subject to any existing restrictions requiring affordability to moderate- or low-income households.</b>

Standard	Requirement
	The acquired units shall be converted into deed-restricted rental or ownership BMR units with the tenure type consistent with the underlying market-rate project.
Location (NEW)	<p>Meet one or more of the following:</p> <ul style="list-style-type: none"> <li>- CSFRA units</li> <li>- Site is identified as a Housing Element Opportunity Site</li> <li>- Within ½ mile of market-rate project</li> <li>- South of El Camino Real</li> <li>- Within the El Camino Precise Plan</li> <li>- In a HCD-designated “Highest Resource Area.”</li> </ul>
Rehabilitation and Physical Needs Assessment and Standards (NEW)	<p>Compliance Plan must identify:</p> <ul style="list-style-type: none"> <li>- Building- and unit-level needs assessments of existing conditions.</li> <li>- Required rehabilitation, repairs, or replacements, including accessibility requirements, based on applicable State and local requirements.</li> <li>- Improvements that make the acquired units comparable in terms of interior design, appearance, materials, and quality of finish as the market-rate units.</li> <li>- Estimated rehabilitation costs.</li> </ul> <p>Soft-story buildings must be retrofitted for current seismic compliance according to state and local requirements, as applicable, based on the physical needs assessment</p>
Affordability (NEW)	<ul style="list-style-type: none"> <li>- Aligns with the general provisions of the affordability levels that would have been provided in the underlying project.</li> </ul>
Unit Count / Bedrooms (NEW)	<ul style="list-style-type: none"> <li>- Acquired units must meet or exceed bedroom count of on-site BMR units that would have otherwise been provided.</li> <li>- Studios count as 0.5 bedrooms.</li> <li>- Total number of acquired units cannot exceed 1.5 times the required number of BMR units.</li> </ul>
Special Conditions (NEW)	Applicant must submit a financing plan that confirms no financial contributions will be required from the City.
Off-site partner (NEW)	<p>If the applicant opts to partner with another entity, the Compliance Plan must include:</p> <ul style="list-style-type: none"> <li>- Applicant’s financial contributions</li> <li>- Terms offered to the partner</li> <li>- Process for partner selection and</li> <li>- The structure of the agreement that forms the relationship between applicant and the partnering entity.</li> </ul>

<b>Standard</b>	<b>Requirement</b>
City oversight of partnership (NEW)	If developer elects to select a partner through a Request for Proposals process, City may review the RFP to confirm compliance.
Applicant’s partner - minimum threshold requirements (NEW)*	<p>If the applicant elects to partner with an entity to undertake the off-site development, that partner shall meet all of the following requirements:</p> <ul style="list-style-type: none"> <li>– The partner shall have verifiable experience developing at least three affordable housing projects within the last ten years that are similar in size, scale, tenure, type, target population, and overall physical and financial complexity to the proposed project.</li> <li>– In the past 10 years, the partner shall not have been subject to any adverse judgment or enforcement action by a public entity in connection with development activities, housing or public contracting.</li> <li>– The partner must not have filed for bankruptcy within the past 10 years.</li> <li>– In the past 10 years, that partner must not have been involuntarily removed from an ownership or controlling interest in any publicly-funded development project.</li> <li>– In the past 10 years, the partner shall not have been debarred or considered for debarment, suspended, declared ineligible, or excluded by any local, state or federal department or agency from participation in government funded programs or contracts.</li> </ul>
Relocation Assistance and First Right to Return (NEW)	Applicants must provide relocation assistance and first right of return to any existing occupant of the units proposed for rehabilitation, as consistent with the City’s Tenant Relocation Assistance Ordinance (TRAO).
Timing (NEW)**	The units shall be acquired, all necessary rehabilitation work shall be completed, and all acquired and rehabilitated units shall receive a Certificate of Occupancy no later than the issuance of the first Certificate of Occupancy for the market-rate units, unless an alternative timeframe is approved by the final decision-making body to ensure that the units are acquired and preserved as BMR units prior to the final Certificate of Occupancy for the market-rate units.

\*Added per EPC recommendation from its March 4, 2026 Public Hearing

\*\* Flexibility added per City Council recommendation from its November 4, 2025 meeting

**Council Direction (November 2025):** City Council accepted staff’s recommendations, and, as mentioned above, made a motion for staff to evaluate the feasibility of including in the

Administrative Guidelines staff discretion to grant an extension of delivery (for off-site development and acquisition/preservation) of up to six months if the developer is working in good faith.

**EPC Recommendation (March 2026):** The Environmental Planning Commission unanimously supported staff’s recommendations, with two additional recommendations referenced earlier in this report. These included:

- Adding provisions to ensure that development partners associated with alternative compliance proposals meet appropriate qualifications and performance standards.

EPC expressed concern that a market-rate developer could partner with an affordable housing developer with a history of poor performance or compliance issues, and emphasized the importance of ensuring that such partnerships do not undermine the delivery or quality of affordable housing.

**Staff analysis and recommendation:** In response to the EPC’s Additional Recommendation 1 provided during its March 2026 Public Hearing and as referenced earlier in the report, staff has incorporated threshold requirements to ensure qualified development partners, which must be demonstrated in the Affordable Housing Compliance Plan submitted by the applicant as part of its development application. During the EPC Public Hearing, staff noted that adding criteria for determining what constitutes a “qualified developer partner” can be incorporated into the requirements. After the EPC meeting, staff reviewed criteria the City has used in prior Request for Qualifications/Requests for Proposals, as well as examples used in other jurisdictions for determining a qualified entity. Staff looked but did not find similar examples in Santa Clara County or San Mateo County in the short time available after the EPC meeting. Staff did find relevant examples used in the City of Napa, City of Los Angeles, and the City of San Francisco.

Based on this research, staff recommends the following minimum threshold requirements if an applicant chooses to work with a partner to deliver the alternative compliance via off-site delivery of units or an acquisition/preservation project for the following categories (See Tables 3 and 4 for detailed requirements):

1. Relevant Development Experience
2. Financial Integrity and Program Performance

Staff recommends incorporating EPC’s recommendation relating to staff’s developed threshold requirements for developer partner selection **into Table 36.40.30-2: Criteria for Off-Site Development Proposals and Table 36.40.30-3: Criteria for Acquisition/Preservation Proposals** of the ordinance.

- Conducting an additional evaluation to ensure that off-site alternative compliance proposals do not contribute to the concentration of lower-income households within the City.

The locational criteria included in Tables 2, 3, and 4 reference “Highest Resource Areas” as defined by maps developed by the California Department of Housing and Community Development (HCD), adopted by the California Tax Credit Allocation Committee (TCAC), and incorporated into the City’s Housing Element. These maps show geographic areas within a city with greater access to opportunity — such as proximity to jobs, schools, and transit — and are used at the State level to guide affordable housing investments that support Affirmatively Furthering Fair Housing (AFFH) goals.

The EPC raised concerns about using the Opportunity Map as a locational standard for alternative compliance. Commissioners noted that some areas identified as “Highest Resource” may also include lower-income neighborhoods and expressed concern that allowing development in these areas could unintentionally reinforce existing socioeconomic disparities. The EPC emphasized the importance of ensuring that locational criteria are applied in a manner that supports equitable distribution of affordable housing and does not contribute to the concentration of lower-income households.

The EPC also discussed whether additional maps, such as the segregation and poverty concentration maps included in the Housing Element, should be used to further evaluate or refine locational criteria. While these maps were not incorporated into the proposed standards, the EPC recommended that staff consider whether such tools could better address concerns related to the concentration of lower-income households.

***Staff analysis and recommendation:*** In response to EPC’s concerns that use of the TCAC Opportunity Map and “Highest Resource” areas could inadvertently reinforce economic segregation, staff evaluated other maps in the Housing Element that could potentially be used to identify locations for alternative means of compliance that would not increase the concentration of low-income households.

Specifically, staff compared the Opportunity Map with the State’s segregation and poverty-concentration maps used for the Housing Element's AFFH analysis. Staff found that the opportunity map generally does not overlap with areas shown as high concentrations of lower-income households in the segregation/poverty concentration maps. Rather, the two types of maps are complementary: where the Opportunity Map shows areas with the highest resources, the segregation/poverty map shows the same areas as lower in segregation and poverty, and vice versa.

Accordingly, staff’s review is that the use of the Opportunity Map provides an objective, State-aligned locational standard that supports AFFH goals, maximizes the potential for affordable housing sites, and would not generally contribute to increased concentration of lower-income households, which was the source of the EPC’s concern. Therefore, staff recommends keeping the use of the “highest resource” Opportunity Map used in the Housing Element as one of the criteria for allowable sites for alternative compliance proposals.

In addition to staff’s recommendation to retain the proposed “Highest Resource Area” requirement without modification, staff recommends adding the Housing Element opportunity sites to the locational requirements. The Housing Element opportunity sites have already been identified in the Housing Element and the BMR Ordinance amendments is not intended to reduce the number of sites already identified as appropriate for housing development.

**Tonight’s Recommendation:** Based on Council direction and EPC input, the alternative means of compliance provisions related to adding qualified developer thresholds and including Housing Element Opportunity Sites **have been incorporated into Section 36.40.30** of the proposed Ordinance.

#### Timing Flexibility

As noted above, in its November 2025 meeting, Council directed staff to evaluate the feasibility of timing flexibility in the BMR Administrative Guidelines regarding the delivery of off-site units and acquisition/preservation units relative to the market-rate units, due to the challenging economic and financing conditions for affordable housing.

After the November 2025 Council meeting, staff conducted analysis and received input from developers that an additional six months after the market-rate units receive their Certificate of Occupancy is insufficient for an off-site, fully affordable project to be completed.

Staff determined that this provision is more appropriately addressed in the Ordinance rather than the guidelines. As reflected in Ordinance Tables 36.40.30-2 and Table 36.40.30-4, staff recommends that flexibility can be provided through an alternative timeframe, if needed, to ensure delivery of the BMR units. The alternative timeframe would still require the BMR units to be either constructed or acquired and preserved prior to the final Certificate of Occupancy for the market-rate units. Applicants will be required to comply with the on-site BMR requirements if these timing requirements are not met.

This recommended modification achieves the intent of the November 2025 Council motion for greater flexibility, responds to developer input that an additional six months may not be sufficient due to the realities and complexities of securing affordable housing financing, and balances the need for the City to retain some certainty regarding when the affordable housing units will be delivered, in satisfaction of the market-rate project's BMR obligations.

### **Amendment 3: Update the In-Lieu Fee Escalator and Amounts**

Although in-lieu fees will no longer be an option for applicants, the fees will still remain as part of the BMR program and updated annually to be used as the method by which to calculate the value that an alternative compliance proposal via land dedication, off-site development, or acquisition/preservation needs to meet<sup>3</sup>.

#### **Update the Annual Escalator**

At the December 2023 Study Session, Council directed staff to evaluate whether an alternative escalator should be used to annually adjust the in-lieu fee under Housing Element Criterion 4. The current escalator uses the Consumer Price Index (CPI), which reflects changes in consumer goods and is not directly tied to construction costs.

Staff evaluated alternative indices and identified the California Construction Cost Index (CCCI) as the most appropriate measure. The CCCI reflects changes in labor and material costs and is therefore better aligned with the methodology used to calculate in-lieu fees.

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<sup>3</sup> The in-lieu fee represents the subsidy needed to produce a BMR unit. The fee amount is the difference between the cost to develop a BMR unit and the economic value of the BMR unit to a developer. This approach sets the in-lieu fee at a level where the cost of the fees is economically equivalent for a developer to build the BMR unit, which increases the likelihood of achieving the BMR Program's objective standard of producing units instead of receiving fees.

**Update the In-Lieu Fee Amounts**

In the November 2025 meeting, Council approved updating the in-lieu amounts as shown in Table 5.

**Table 5: Current and Proposed BMR In-Lieu Fees**

Housing Typology	Current In-Lieu Fees in City Master Fee Schedule (2025)	Updated In-Lieu Fees	% Change
Rental Housing	\$118/net new habitable sq. ft.	\$98/net new habitable sq. ft.	17% decrease
Ownership - Rowhome/ Townhomes	\$153/net new habitable sq. ft.	\$118/net new habitable sq. ft.	23% decrease
Ownership - All Other Projects	\$67/net new habitable sq. ft.	\$91/net new habitable sq. ft.	36% increase

The current in-lieu fee schedule was determined using the “equivalency methodology” to reflect the value of the BMR units if they were provided integrated with market-rate units. The fees were based on economic and financial conditions in 2019 when the BMR Program was last comprehensively updated. Since that time – due to a combination of COVID-19 impacts; changes in construction costs and financing terms; changes in rents and sales prices, increases in State income level assumptions; and other factors – the in-lieu fee amounts have changed.

**Council Direction (November 2025):** In November 2025, Council supported staff’s recommendations to replace the CPI with the CCCI as the annual escalator for in-lieu fees and update the in-lieu fee amounts.

**EPC Recommendation (March 2026):** The EPC supported staff’s recommendations without modification.

**Tonight’s Recommendation:** Staff recommends no changes to the November 2025 Council direction for this amendment and recommends adoption of the provision incorporating the CCCI escalator **into Section 36.40.10(d) of the proposed Ordinance**. The updated in-lieu fee amounts will be implemented through the **City’s Master Fee Schedule as part of the Fiscal Year 2026–27 budget process**.

#### **Amendment 4: Complete Remaining Clean-up items**

As noted above, Phase 1 amendments were completed in 2025 and included a portion of the clean-up items identified during the December 2023 Study Session. The following two clean-up items remain and have been incorporated into the BMR Ordinance amendments:

- Allow ownership projects to have a weighted average affordability of up to 100 percent AMI.
- Update the administering department to the Housing Department. The current Ordinance references the Community Development Department (CDD); however, the Housing Department, established in Fiscal Year 2023–24, now administers the BMR Program.

**Council Direction (November 2025):** In November 2025, Council supported staff’s recommendations to implement these remaining clean-up items.

**EPC Recommendation (March 2026):** The EPC supported the recommendations without modification.

**Tonight’s Recommendation:** No changes are proposed to these amendments from the November 2025 Council direction. Staff recommends adoption of the provisions, as **incorporated into Sections 36.40.10(b)(1) and 36.40.10(k)** of the proposed Ordinance.

#### **Amendment 5: Remove the HOA Reserve Fund Requirement**

When the BMR Program was updated in 2019, Council required an HOA Reserve Fund for ownership projects with very-low and low-income units to help offset future HOA fee increases that could make homeownership unaffordable.

In 2023, the State adopted Assembly Bill (AB) 572, as codified in California Civil Code section 5605 (effective January 1, 2024), which limits annual HOA fee increases on deed-restricted affordable units to 5% plus CPI, capped at 10%, to protect low-income and below homeowners from excessive increases.

Based on staff and consultant analysis, it was determined that AB 572 generally addresses the policy concern that the HOA Reserve Fund was intended to mitigate. Additionally, developers have indicated that the reserve requirement can impact project feasibility and limit the production of ownership housing.

**Council Direction (November 2025):** In November 2025, Council supported staff’s recommendation to remove the HOA Reserve Fund requirement for low-income ownership BMR units.

**EPC Recommendation (March 2026):** The EPC supported staff’s recommendation without modification.

**Tonight’s Recommendation:** Staff recommends no changes to the November 2025 Council direction for this amendment and recommends adoption of the provision, which **removes the requirement from Section 36.40.10(b)(1)** of the proposed Ordinance.

**Amendment 6: Adopt a Graduated In-Lieu Fee Reduction for Small Projects**

The BMR Program allows small projects (up to six units) to pay the in-lieu fee to satisfy the BMR requirements. The cutoff is six units because a 15 percent requirement for small projects would generate only a fraction of a BMR unit. Therefore, the in-lieu fee for a small project would be for a fractional BMR unit.

During the November 2025 City Council meeting, staff recommended incorporating a “graduated fee reduction” for small projects, meaning that **the more units a developer builds, up to a maximum of six units, the lower the per-unit fee**, as shown in Table 6.

**Table 6: Example of Graduated Fee Reduction**

Number of units*	Graduated Reduction	Without reductions		With reductions	
		Total Fee	Fee Per unit	Total Fee	Fee Per unit
1	0% (full fee)	\$22,136	\$22,136	\$22,136	\$22,136
2	20%	\$44,273	\$22,136	\$35,418	\$17,709
3	40%	\$66,409	\$22,136	\$39,846	\$13,282
4	60%	\$88,546	\$22,136	\$35,418	\$8,855
5	80%	\$110,682	\$22,136	\$22,136	\$4,427
6	100% (No fee)	\$132,818	\$22,136	\$0	\$0

\*Each unit is 2,200 square feet for the purposes of this example, which is the average size of a newly constructed single family home.

**The graduated fee reduction is intended to achieve two purposes:**

- Incentivize developers of small projects to maximize the development potential of their sites, including small-scale infill development and R1 sites zoned for one single-family unit.

- Further Housing Element Goal 2.2 - Pilot ADU & SB9 Financial Incentives Program. A graduated fee reduction could maximize the use of lot splits enabled by State legislation, such as Senate Bill (SB) 9, and achieve incrementally more new housing supply than without the graduated reduction.

Staff recommended structuring the graduated fee exemption for small projects so that it does not incentivize a developer to build less than they could have otherwise on a site.

**Council Direction (November 2025):** Council approved the graduated fee reduction recommendation, and as discussed earlier in this report, included two additional provisions in the Council motion:

- Adjust the graduated fee reduction to work proportionally with the maximum number of units physically possible for a project, and
- Direct staff to evaluate the feasibility of incorporating the graduated fee reduction with maximizing the development potential of small sites, up to 10 units (SB 684, and SB 1123), and return to the Council with options.

**Staff Analysis of the Council Direction:** Staff recommends using the legally permitted development density to calculate the number of units physically possible for a project, given the site on which it is located. Staff believes that the legally allowable density for a particular site provides the most objective standard and would be based on base density allowed by the General Plan and zoning designations, as well as the provisions in Senate Bill 684 that allow a site to be developed up to ten (10) units by-right, prior to applying potential State Density Bonus Law considerations.

Table 7 provides an example comparing a project that can build a maximum of six units to one that can build a maximum of four units, and how the in-lieu fee changes.

**Table 7: Example of Graduated Fee Reduction**

Max. Units	Graduated Reduction	Fee Reduction	Max. Units	Graduated Reduction	Fee Reduction
1	0% (full fee)	\$22,136	1	0% (full fee)	\$22,136
2	20%	\$17,709	2	33%	\$14,758
3	40%	\$13,282	3	67%	\$7,378
4	60%	\$8,855	4	100% (no fee)	\$0
5	80%	\$4,427			
6	100% (no fee)	\$0			

The specific methodology for calculating the legally allowed density will be further clarified in the Administrative Guidelines, including the graduated reduction schedule for projects at different unit maximums, up to six maximum units.

Staff conducted preliminary evaluation of extending the graduated fee reduction for small projects, up to 10 units. However, additional analysis needs to be conducted to determine if this is feasible. Because smaller projects, up to 10 units, might be more often oriented towards ownership models, staff recommends conducting additional analysis as part of the Low- and Middle-Income Homeownership Strategy and the next scheduled BMR review in 2028 as required by the City's 2023-31 Housing Element.

**EPC Recommendation (March 2026):** The EPC supported staff's recommendation without modification.

**Tonight's Recommendation:** Staff recommends using the legally allowed development density to calculate the number of units that is physically possible for a project and scaling the fee reduction schedule accordingly. This policy has been **incorporated into a new section of the municipal code SEC. 36.40.32.**

#### **Amendment 7: Allow Updates to the BMR Program Guidelines to Occur Administratively**

The BMR Program currently stipulates that the BMR Administrative Guidelines necessary for the implementation of the Ordinance be adopted by resolution (Section 36.40.10(j)). An administrative process would enable staff to more efficiently incorporate operational adjustments, clean-ups, and clarifications, including those necessitated by changes in State or laws. Additionally, allowing staff-level edits would promote greater responsiveness and consistency with other City guidelines. For example, the City's Density Bonus Guidelines is administratively prepared, adopted, and periodically updated.

**Council Direction (November 2025):** In November 2025, Council supported removing the resolution requirement and allowing the Guidelines to be adopted and periodically updated administratively.

**EPC Recommendation (March 2026):** EPC accepted staff's recommendation without modification.

**Tonight's Recommendation:** Staff recommends no changes to the November 2025 Council direction for this amendment and recommends adoption of the provision, which **incorporates this change into Section 36.40.10(j)** of the proposed Ordinance.

### **Updated Recommendation – Moving BMR Ordinance from Chapter 36 to Chapter 46**

In November 2025, Council approved staff’s recommendation to evaluate relocating the BMR Ordinance from Chapter 36 (Zoning) to Chapter 46 (Housing). This change would consolidate it with the City’s Tenant Relocation Assistance and Mobile Home Rent Stabilization ordinances, improving accessibility for developers. Because the Housing Department administers the BMR Program, relocating the ordinance would also better reflect its administrative and financial nature and align oversight accordingly. Other jurisdictions, such as San Jose, similarly place inclusionary housing programs within housing-related code sections rather than zoning.

Relocation would also eliminate the requirement for the EPC to hold public hearings on future amendments, streamlining the update process.

Following the November 2025 direction, staff analyzed potential impacts but could not initially confirm how the change would affect the BMR program. As a result, staff recommended retaining the ordinance in Chapter 36 at the EPC’s March 2026 public hearing.

**Staff subsequently determined that the move is feasible, and the benefits of consolidation and streamlined amendments are significant. Accordingly, staff now recommends moving the BMR Ordinance to Chapter 46. If approved, the amendment will be brought forward before the end of 2026.**

### **FISCAL IMPACT**

Approval of the proposed ordinance does not create a direct fiscal impact. However, eliminating the in-lieu fee option as an alternative means of compliance is expected to result in the loss of future revenues that would otherwise have been generated by these fees.

### **LEVINE ACT**

California Government Code Section 84308 (also known as the Levine Act) prohibits city officials from participating in any proceeding involving a “license, permit, or other entitlement for use” if the official has received a campaign contribution exceeding \$500 from a party, participant, or agent of a party or participant within the last 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information, see the Fair Political Practices Commission website: [www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html](http://www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html)

Please see below for information about whether the recommended action for this agenda item is subject to or exempt from the Levine Act.

**EXEMPT FROM THE LEVINE ACT**

- General policy and legislative actions

**CONCLUSION**

The proposed amendments represent the implementation of Phase Two of the City’s Below Market Rate (BMR) Program updates, consistent with Council direction provided in November 2025 and informed by the Environmental Planning Commission’s review in March 2026. Collectively, these amendments are intended to strengthen the effectiveness of the BMR Program by improving clarity, aligning with State housing policies and funding frameworks, and addressing key Housing Element objectives related to housing production, access to opportunity, and program administration.

The updates refine alternative compliance provisions, modernize fee structures, enhance accessibility requirements, and remove or streamline provisions that may constrain housing feasibility, such as the HOA Reserve Fund requirement and administrative processes. In addition, the amendments incorporate targeted improvements to support smaller-scale development and ensure that affordable housing delivery remains feasible and competitive in a constrained development environment.

Overall, the proposed Ordinance maintains the City’s commitment to requiring on-site affordable housing while providing clear, objective, and implementable standards for alternative compliance where appropriate. Staff recommends adoption of the Ordinance to codify prior Council direction and continue advancing the City’s housing goals in a manner that is both equitable and responsive to current market and regulatory conditions.

**ALTERNATIVES**

1. Do not approve the recommended amendments.
2. Provide other direction.

**PUBLIC NOTICING** – The City Council’s agenda is advertised on Channel 26, and the agenda and this report appear on the City’s website. An email distribution to the City Housing Element interest list and developer distribution list, and a public notice of hearing were published in a newspaper of general circulation.

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Attachment: 1. Ordinance Amending Chapter 36 (Zoning) of the City Code