

CITY OF MOUNTAIN VIEW

ENVIRONMENTAL PLANNING COMMISSION
STAFF REPORT
MARCH 4, 2026

5. PUBLIC HEARING

5.1 Below-Market-Rate Housing Program Zoning Code Update

RECOMMENDATION

That the Environmental Planning Commission:

1. Recommend that the City Council adopt an Ordinance of the City Council 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, as Recommended by the Environmental Planning Commission, to be read in title only, further reading waived (Attachment 1 to the Staff Report).

EXECUTIVE SUMMARY

The City's State-certified 2023-31 Housing Element includes Program 1.9, which requires the City to evaluate the efficacy of the Below Market Rate Housing Program ("BMR Program" or "BMR Ordinance" will be used interchangeably for the remainder of this memo) once in 2023 and again in 2028.

On December 12, 2023, Council held a Study Session to review the BMR Program to meet the first deadline. The review included five criteria as part of Housing Element Program 1.9, and 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 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.

On February 5, 2025, EPC held a Public Hearing and unanimously recommended that Council approve the first phase of BMR Ordinance amendments recommended by staff, which focused on clean-up items. On February 25, 2025, Council held a Public Hearing and unanimously approved the recommendations.

On November 4, 2025, Council held a New Business item to review the second phase of the amendments, including:

- Adopting requirements for increasing the physical accessibility of BMR units.
- Adding acquisition/preservation of existing housing units as a new alternative means of compliance, in addition to the existing land dedication and off-site development options for a total of three options; remove in-lieu fees and the catch-all option from the list of options.
- Incorporating general requirements for alternative means of compliance, as well as additional specific criteria for each alternative compliance option, including requirements associated with State Affirmatively Further Fair Housing (AFFH) requirements.
- Amending the in-lieu fee rates and use the California Construction Cost Index (CCCI) instead of the Consumer Price Index (CPI) for annual escalations.
- Incorporating remaining clean-up items.
- Other:
 - Remove the HOA Reserve Fund requirement.
 - Administratively update the BMR Program Guidelines.
 - Incorporate a graduated fee reduction for small projects with one (1) to six (6) units.
 - Evaluate moving the BMR Ordinance from Chapter 36 (Zoning Code) to Chapter 46 (Housing-related Ordinances).

Council approved the recommendations and directed staff to bring back the second set of BMR Ordinance amendments through the public hearing process in 2026.

This second set of BMR Ordinance amendments are the focus of this EPC Public Hearing. EPC's recommendations will be forwarded to Council, who is scheduled to hold a Public Hearing on April 28, 2026.

BACKGROUND AND ANALYSIS

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"> • Projects with 7 or more units: <ul style="list-style-type: none"> – 15% BMR: rental or ownership (non-rowhouse/townhouse) projects. – 25% BMR: for rowhouse/townhouse projects. • Projects with less than 7 units: fractional in-lieu fees for partial units.
Affordability Levels	<ul style="list-style-type: none"> • Rental: <ul style="list-style-type: none"> – 15% BMR units at AMI greater than 50% up to 80% of Area Median Income (AMI), with 65% AMI weighted average. • Ownership: <ul style="list-style-type: none"> – 15% BMR units at AMI greater than 80% up to 120% AMI, with 100% AMI weighted average (non-rowhouse/non-townhome projects). – Additional 10% requirement for rowhouse/townhouse projects at AMI greater than 120% up to 150% AMI, with 135% AMI weighted average.
Development Standards	<ul style="list-style-type: none"> • BMR units comparable to market-rate units in size, location, and design.
Duration	<ul style="list-style-type: none"> • Affordable in perpetuity.
Alternative Compliance ¹	<ul style="list-style-type: none"> • Applicant may request alternative means of compliance. • Council has discretionary approval.

¹ 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 that reaffirms the authority of jurisdictions to implement BMR programs.

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

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 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 1: On February 5 and [February 25, 2025](#), the EPC and City Council, respectively, held a Public Hearing 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. 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.

Amendment 1: Increase the Physical Accessibility of BMR Units

In the December 2023 Study Session, Council directed staff 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 restricts 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.

Conclusion: 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. This amendment has been integrated into Section 36.40.10(l) of the BMR Ordinance.

Amendment 2: Add Requirements for Alternative Means of Compliance

Amendment 2 adds requirements that an applicant/developer (terms to be used interchangeably) must meet if they propose an alternative means of compliance rather than building integrated BMR units on-site. These changes respond to Housing Element Criterion 3 and 4, and will allow the BMR Program to better align with State requirements, provide greater clarity for applicants/developers, and require applicants to provide City staff comprehensive, necessary information to more effectively and efficiently review a development application in compliance with the BMR Program and State streamlined review timelines.

Based on Council direction from the November 2025 meeting, the following general requirements will be made to apply to the alternative compliance measures section of the BMR Ordinance:

- Keep land dedication and off-site development of BMR units on the list of allowable alternative compliance options; and remove in-lieu fees and the “catch-all” option (which allows an applicant to propose something different) from the list of options.
- Add acquisition/preservation of existing housing units – including those covered under the CSFRA – to the list of options. **This brings the allowable compliance measures to three options: land dedication, off-site delivery, and acquisition/preservation.**
- Clarify that alternative means of compliance apply to both rental and ownership projects.

- Clarify that the value of an applicant's alternative compliance proposal be no less than the value of providing the units on-site, whereas the current BMR Program requires alternative compliance options to deliver greater value than on-site units. 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.²
- An applicant must contribute financial resources to facilitate the proposed alternative compliance proposal, especially if any proposal includes a partnership with another party, such as an affordable housing developer, community land trust, etc in order to develop the affordable housing in compliance with the BMR requirements. An applicant's contribution shall include the full value of the land in perpetuity, as well as other resources if needed, such as providing their own funding in addition to the land, securing new sources such as through partnerships with foundations, tech funding, etc, or other methods. This aligns with the fact that an applicant would have had the responsibility to finance the construction of on-site BMR units.
- If an applicant proposes a partnership with another entity such as an affordable housing developer, the proposal shall also affirm that: the partner will not provide any monetary compensation to the applicant, such as a ground lease payment or other payment, for costs that the applicant should bear; that the partner will only bear their portion of costs as related to the affordable units; and that the applicant shall not shift any of its own financial responsibility or development costs related to the market-rate project onto their partner.
- Developers must submit a complete Below Market Rate Compliance Plan (Compliance Plan) as part of their formal development application. This includes a detailed description of the proposed alternative means of compliance, provision of required documentation and attachments, a feasibility analysis that demonstrates the developer will successfully deliver the BMR project, pro forma, a financing plan, and demonstration that the alternative compliance achieves an equivalent value that would have been provided with on-site BMR units. A complete Compliance Plan with quality information provided at the beginning of the formal application process is necessary to ensure that the City has the information and time to review the Project, especially given State requirements for streamlined review of development applications.

² 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.

Note that during the December 2023 Study Session, Council approved staff’s recommendation to include a fee that an applicant must pay if they wish to propose an alternative compliance measure instead of building on-site BMR units integrated with market-rate units. Based on experience with recent projects, alternative compliance measures proposals are complicated to evaluate and require significantly more staff time than evaluating a project that includes on-site BMR units. Therefore, the master fee schedule was updated for FY 2025-26 to include a cost-recovery fee (\$32,000) that an applicant must pay if they propose an alternative compliance instead of building the on-site BMR units. The cost-recovery fee will be escalated annually by 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. 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

Standard	Requirement	Rationale
Parcel Size and Capacity (Existing - no changes)	<ul style="list-style-type: none"> - 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.. 	<ul style="list-style-type: none"> - Ensures that the site can deliver the equivalent number of units as the on-site unit requirement.
Location (new)	<p>One of the following must be true for the site being dedicated:</p> <ul style="list-style-type: none"> - Site is within 0.5 mile of the underlying project. - Site is located south of El Camino Real. - Site is included in the El Camino Precise Plan. - Site is located in an area designated by the California Department of Housing and Community Development-as a “Highest Resource Area.” 	<ul style="list-style-type: none"> - Advances AFFH goals.
Environmental Conditions (Existing – no changes)	<ul style="list-style-type: none"> - Applicant must submit environmental conditions reports, including but not limited to Phase I and Phase II 	<ul style="list-style-type: none"> - Ensures site is free from contamination and risk. Places the financial

	<p>environmental site assessments as applicable, and</p> <ul style="list-style-type: none"> - Applicant must complete any necessary remediation to make the site suitable for residential development prior to conveyance of the land. 	<p>responsibility onto developer rather than the City.</p>
<p>Special Conditions (Existing - no changes)</p>	<ul style="list-style-type: none"> - 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). 	<ul style="list-style-type: none"> - Ensure the dedicated site offers comparable development conditions to the main project site and does not impose disproportionate costs.
<p>Site Infrastructure (Existing - no changes)</p>	<ul style="list-style-type: none"> - 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. 	<ul style="list-style-type: none"> - Ensures the parcel is fully serviceable, development-ready and that the cost of site infrastructure is not passed on to the City.
<p>Financing of the Alternative Compliance Measure (new general requirements)</p>	<p>Applicant must submit a feasibility and financing analysis with their Compliance Plan that:</p> <ul style="list-style-type: none"> - Demonstrates the value of the alternative compliance aligns with the in-lieu fee equivalency. - Includes a City-led appraisal. - Provides a comprehensive pro forma, including secured or potential funding/financing. - Identifies any additional developer contribution, if applicable. 	<ul style="list-style-type: none"> - Facilitates staff review of project feasibility and adequacy of developer contribution(s).
<p>Cost Recovery (new)</p>	<ul style="list-style-type: none"> - 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 on the dedicated site as would 	<ul style="list-style-type: none"> - Cost recovery for staff time and other administrative costs associated with a

	have been required for the site with market-rate units. .³	land dedication project, such as developer selection process.
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.	– Ensures the alternative compliance obligation is met upfront consistent with past practice.

Specific Amendments for Off-Site Development

Table 3 below provides a summary of the new/amended criteria specifically for the off-site development option that applicants must meet. 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, and have been incorporated into Section 36.40.30 (c).

Table 3. Criteria for Off-Site Development Proposals

Standard	Requirement	Rationale
Location (updated)	<p>One of the following must be true for the site of the off-site BMR units:</p> <ul style="list-style-type: none"> – Site is adjacent to underlying project (same or separate parcel are both permissible). – Site is within 0.5 mile of the underlying project. – Site is located south of El Camino Real. – Site is included in the El Camino Precise Plan. – Site is located in an area designated by the California Department of Housing and Community Development-as a “Highest Resource Area.” 	– Advances AFFH goals.

³ 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	Rationale
Suitability (existing - recommend deleting)	<p>The proposed BMR units must be deemed suitable by the City based on</p> <ul style="list-style-type: none"> — location, — type of project, — number of units/bedrooms, — compliance with BMR requirements, — adjacent uses, — comparability to market rate units, and — other planning criteria. 	<ul style="list-style-type: none"> – These requirements have been folded into other criteria.
Access to Amenities (new)	<p>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 BMR units must be granted access to shared amenities located on the underlying project parcel..</p>	<ul style="list-style-type: none"> – Meets AFFH goals.
Unit Requirement (updated)	<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>	<ul style="list-style-type: none"> – Reduced from 20% to align with on-site requirement of 15%. – Expanded the unit requirement to include townhome/rowhomes. – Proportionality requirement achieves comparable or improved off-site development value relative to on-site BMR units.
Affordability Term (new general requirements)	<p>Off-site units must remain affordable in perpetuity, unless a shorter term is required by a funding source or otherwise provided by state law.</p>	<ul style="list-style-type: none"> – Perpetuity aligns with BMR provisions but provides flexibility depending on requirements of other funding sources (such as tax credits).

Standard	Requirement	Rationale
<p>Financing of the Alternative Compliance Measure (new general requirements)</p>	<p>Applicant must submit a feasibility and financing analysis with their Compliance Plan that:</p> <ul style="list-style-type: none"> - Demonstrates the value of the alternative compliance aligns with the in-lieu fee equivalency. - Identifies any developer contribution to make project feasible (such as full contribution of land, equity, securing other funding/financing). - Provides a comprehensive pro forma showing secured or viable financing. - Confirms no City financial contributions are required. 	<ul style="list-style-type: none"> - Review project feasibility. - Requirement of not relying on City funding ensures that the City is not financially responsible for providing the affordable units that the developer would otherwise have been fully responsible for providing on-site.
<p>Off-site developer partner (new)</p>	<p>If the applicant opts to partner with another entity, the Compliance Plan must include:</p> <ul style="list-style-type: none"> - the applicant’s financial contributions - terms offered to the partner - process for partner selection and - the structure of the agreement that forms the relationship between applicant and the partnering entity. 	<ul style="list-style-type: none"> - Allows City to evaluate adequacy of developer contribution and partnership structure in alignment with approved project requirements.
<p>City oversight of partnership (new)</p>	<p>If the applicant elects to select a partner through a Request for Proposals (RFP) process, City may review the RFP to confirm compliance.</p>	<ul style="list-style-type: none"> - Ensures alignment with approved project requirements.
<p>Timing of delivery (updated)</p>	<ul style="list-style-type: none"> - 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. - If the applicant fails to obtain a Certificate of Occupancy for the off-site BMR units by the deadline above, the underlying project shall be required to integrate the BMR units. 	<ul style="list-style-type: none"> - Ensures off-site units are delivered concurrently with market rate units.

Specific Requirement for Acquisition/Preservation

The acquisition and preservation of existing housing units, and converting the units into deed-restricted affordable housing, is an allowable alternative compliance options under State law as referenced in AB 1505 and codified in relevant part at California Government Code section 65850, which passed in 2017 and reaffirmed the authority of local jurisdictions to implement BMR programs. 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 the 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 (no bold font is used because the entire option and table are new), **which have been incorporated into Section 36.40.30 (d).**

Table 4: Requirements for New Acquisition/Preservation Option

Standard	Requirement	Rationale
Eligibility	<p>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.</p> <p>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.</p>	<ul style="list-style-type: none"> - Per Council direction from December 2023 Study Session. - Can help address tenant displacement.
Location	<p>Meet one or more of the following:</p> <ul style="list-style-type: none"> - CSFRA units - Withing ½ mile of market-rate project - South of El Camino Real - Within the El Camino Precise Plan - In a HCD-designated “Highest Resource Area.” 	<ul style="list-style-type: none"> - Advances AFFH goals and Housing Element 2.6 to facilitate affordable housing in and mobility to highest resource neighborhoods.

Standard	Requirement	Rationale
Rehabilitation and Physical Needs Assessment and Standards	<p>Compliance Plan must identify:</p> <ul style="list-style-type: none"> - Building- and unit-level needs assessments of existing conditions. - Required rehabilitation, repairs, or replacements, including accessibility requirements, based on applicable State and local requirements. - Improvements that make the acquired units comparable in terms of interior design, appearance, materials, and quality of finish as the market-rate units. - Estimated rehabilitation costs. <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>	<ul style="list-style-type: none"> - Ensures housing quality, habitability, long-term physical viability, and comparability with on-site BMR units.
Affordability	<ul style="list-style-type: none"> - Aligns with the general provisions of the affordability levels that would have been provided in the underlying project. 	<ul style="list-style-type: none"> - Same affordability levels as on-site BMR units.
Unit Count / Bedrooms	<ul style="list-style-type: none"> - Acquired units must meet or exceed bedroom count of on-site BMR units that would have otherwise been provided. - Studios count as 0.5 bedrooms. - Total number of acquired units cannot exceed 1.5 times the required number of BMR units. 	<ul style="list-style-type: none"> - Acquisition projects typically involve older building, usually with smaller units relative to new projects. - 1.5 unit cap balances flexibility for applicant while achieving bedroom count equivalency in a manner that does not result in City receiving disproportionate number of small units

Standard	Requirement	Rationale
		relative to market rate mix.
Term	Off-site units must remain affordable in perpetuity, unless a shorter term is required by a funding source or otherwise provided by state law.	<ul style="list-style-type: none"> - Perpetuity aligns with BMR provisions but provides flexibility depending on requirements of other funding sources (such as tax credits).
Off-site partner	<p>If the developer opts to partner with another entity, the Compliance Plan must include:</p> <ul style="list-style-type: none"> - Applicant’s financial contributions - Terms offered to the partner - Process for partner selection and - The structure of the agreement that forms the relationship between applicant and the partnering entity. 	<ul style="list-style-type: none"> - Allows City to evaluate adequacy of developer contribution and partnership structure in alignment with approved project requirements.
City oversight of partnership	If developer elects to select a partner through a Request for Proposals process, City may review the RFP to confirm compliance.	<ul style="list-style-type: none"> - Ensures alignment with approved project requirements.
Financing of the Alternative Compliance Measure	<p>Applicant must submit a feasibility and financing analysis with their Compliance Plan that:</p> <ul style="list-style-type: none"> - Demonstrates the value of the alternative compliance aligns with the in-lieu fee equivalency. - Identifies any developer contribution to make project feasible (such as full contribution of land, equity, securing other funding/financing). - Provides a comprehensive pro forma showing secured or viable financing. - Confirms no City financial contributions are required. - The City may, at the applicant’s expense, retain a consultant to review the reasonableness plan. 	<ul style="list-style-type: none"> - Review project feasibility. - Requirement of not relying on City funding ensures that the City is not financially responsible for providing the affordable units that the developer would otherwise have been fully responsible for providing on-site.

Standard	Requirement	Rationale
Relocation Assistance and First Right to Return	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).	– Mitigates existing tenants from hardship during rehabilitation, prevents displacement and aligns with the City’s fair housing and tenant-protection goals.
Timing	<ul style="list-style-type: none"> – Complete all required rehabilitation work and obtain Certificates of Occupancy no later than the market-rate project’s Certificate of Occupancy. – If the applicant fails to obtain a Certificate of Occupancy for the acquired and preserved BMR units by the deadline above, the underlying project shall be required to integrate the BMR units. 	– Ensures timely delivery of affordable units concurrent with market-rate development.

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

Update the Annual Escalator

In the December 2023 Study Session, Council directed staff to review whether there is a different escalator that should be used to annual adjust the in-lieu fee as part of Housing Element Criterion 4. Currently, the fee is adjusted using the Consumer Price Index (CPI), which tracks the change in the price of a basket of consumer goods, which is unrelated to the cost of construction. Staff reviewed other escalators/indices and identified the California Construction Cost Index (CCCI) as the most appropriate index to calculate annual adjustments to the in-lieu fee. The CCCI reflects changes in labor and material costs for construction projects, which is better aligned with the purpose and methodology of calculating the in-lieu fees.⁴ This amendment has been integrated into Section 36.40.10 (d).

Council approved staff’s recommendation to utilize the CCCI escalator moving forward.

⁴ [DGS California Construction Cost Index CCCI indicates that the CCCI increased by 54% from August 2018 to August 2025, while the Consumer Price Index for the San Francisco Area increased only 24% during this same period.](#)

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.

The updated fees will be integrated into the next update of 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. Currently, the BMR Ordinance references the Community Development Department (CDD) as the administering department because the City’s housing function was once part of CDD. The City’s Housing Department was formed in Fiscal Year 2023-24 and implements the BMR Ordinance. **This amendment has been integrated into Sections 36.40.10 (k).**

Amendment 5: Remove the HOA Reserve Fund Requirement

When the BMR Program was updated in 2019, staff received stakeholder input that very-low and low-income households have challenges sustaining homeownership due to annual increases in homeownership association (HOA) fees. As a result, Council approved staff's recommendation to add a requirement for developers of ownership housing to provide an "HOA Reserve Fund" if they choose to incorporate very-low and/or low-income BMR units in their project.⁵ The HOA Reserve Fund would cover future increases in HOA fees should the household's income fail to increase at a sufficient rate to cover the higher expense.

In 2023, the Governor signed Assembly Bill (AB) 572, which went into effect January 1, 2024. The intent of AB 572, as codified in California Civil Code section 5605, is to protect owners of deed-restricted affordable housing units from excessive HOA fee increases, which could make homeownership unsustainable for low-income households. AB 572 restricts an HOA board from imposing an increase in a regular assessment on a deed-restricted ownership unit that exceeds 5% plus the percentage change in CPI, capped at a 10% maximum increase.

The City's consultant and staff conducted in-depth analysis to determine if AB 572 sufficiently addresses the policy concern that the HOA Reserve Fund is intended to address. While there are many variables and circumstances that can impact the analysis, staff's conclusion is that AB 572 appears to be generally sufficient in addressing excessive annual increases in HOA fees. Additionally, staff have received feedback from developers that the HOA Reserve Fund can impact project feasibility, which could limit the supply of new ownership housing.

As mentioned, on November 4, 2025 Council supported the staff recommendation of removing the HOA Reserve Fund requirement. **The Ordinance update removes this requirement from SEC.36.40.10(b)(1).**

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

The BMR Program allows small projects between one (1) and six (6) 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.

⁵ The BMR Program does not require very low- or low-income ownership units. However, an applicant may choose to include such units to meet other requirements such as those in the State Density Bonus Law, which would trigger the HOA Reserve Fund requirement.

During the December 2025 Study Session, 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	\$0.00	\$0.00

*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 in a manner that does not incentivize a developer to build less than they could have otherwise on a site.

In the November 2025 meeting, Council approved the graduated fee reduction recommendation, and 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.**

Staff recommends using the legally allowed development density to calculate the number of units that is physically possible for a project given the site that it is on. Staff anticipates that the legally allowable density for a particular site would provide 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 allows a site to

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 versus a project 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.

- **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.**

Staff conducted preliminary evaluation of extending the graduated fee reduction for 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.

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

The BMR Program currently stipulates that the BMR Administrative Guidelines (Guidelines) necessary for the implementation of the Ordinance be adopted by resolution (Section 36.40.10(j)).

In November 2025, Council approved staff’s recommendation to remove this resolution requirement and allow adoption and periodic updates to the Guidelines to occur administratively. 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.

This amendment has been incorporated into Section 36.40.10(j).

Not Recommended

In November 2025, Council approved staff's recommendation to evaluate moving the BMR Ordinance from Chapter 36 to Chapter 46, which would consolidate it with the City's Tenant Relocation Assistance Ordinance and Mobile Home Rent Stabilization Ordinance and make it easier for developers to find housing-related ordinances in the same chapter. Additionally, the Housing Department administers the BMR Program. Relocating the BMR Ordinance from the zoning code would better reflect its administrative and financial nature, streamline amendment procedures, and align oversight with the Housing Department. Other jurisdictions, such as the City of San Jose, have included their inclusionary housing program within a housing-related chapter in their City Code instead of the Zoning Code.

Subsequently, staff conducted an analysis of potential impacts that may result from moving the BMR Program out of the Zoning Code. While staff could not conclusively determine that moving the BMR Program to Chapter 46 would impair the City's ability to implement the program, it could expose the City to potential challenges that would not arise if the BMR Program remained in Chapter 36. Therefore, staff recommends keeping the BMR Program in Chapter 36.

NEXT STEPS

Date	Council/ Commission	Agenda Section	Topic
April 28, 2026	City Council	Public Hearing	Ordinance First Reading
May 26, 2026	City Council	Consent	Ordinance Second Reading

The amended BMR Ordinance will become effective on June 25, 2026, 30 days following the second reading.

PUBLIC NOTIFICATION

The Environmental Planning Commission's (EPC) agenda is advertised on Channel 26, and the agenda and this report appear on the City's website. An email distribution to City Housing Element interest list and developer distribution list, and a newspaper notice has been circulated for this item.

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