

CITY OF MOUNTAIN VIEW  
RESOLUTION NO.  
SERIES 2018

A RESOLUTION AMENDING THE BELOW-MARKET-RATE HOUSING PROGRAM  
ADMINISTRATIVE GUIDELINES ASSOCIATED WITH THE  
ORDINANCE AMENDING THE BELOW-MARKET-RATE HOUSING PROGRAM,  
MOUNTAIN VIEW CITY CODE SECTIONS 36.40.10 THROUGH 36.40.25

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

WHEREAS, on January 17, 2018, the Environmental Planning Commission (EPC) held a duly noticed public hearing and recommended that the Council consider amendments to the City's below-market-rate ordinance and program, including administrative guidelines associated with the ordinance (BMR Program); and

WHEREAS, on February 13, 2018, the City Council held a duly noticed public hearing, considered the recommendations from the EPC, and introduced an ordinance amending the BMR Program, and adopted a resolution amending the associated BMR Program Administrative Guidelines; and

WHEREAS, on February 27, 2018, the City Council considered adoption of the ordinance amending the BMR Program at a second reading, and also considered clarifying revisions to the BMR Program Administrative Guidelines related to an exemption for rental development projects with applications submitted and determined complete by 5:00 p.m. on April 28, 2018.

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

1. This Resolution supercedes Resolution No. 18195 adopted by the City Council on February 13, 2018.
2. That the Administrative Guidelines associated with the Ordinance Amending the Below-Market-Rate Housing Program, Mountain View City Code Sections 36.40.10 through 36.40.25, are hereby amended as shown in Exhibit A.

3. The effective date of this resolution shall be the same as the effective date of the Ordinance Amending the Below-Market-Rate Housing Program, Mountain View City Code Sections 36.40.10 through 36.40.25.

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KB/4/RESO/015-02-27-18r-E

Exhibit: A. Amended BMR Guidelines

CITY OF MOUNTAIN VIEW  
BELOW-MARKET-RATE  
HOUSING PROGRAM  
ADMINISTRATIVE GUIDELINES

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

REVISED: MAY 14, 1999

REVISED: FEBRUARY 13, 2018

## BELOW-MARKET-RATE PROGRAM ADMINISTRATIVE GUIDELINES

The purpose of the Below-Market-Rate Housing Program is to provide the City of Mountain View with a supply of affordable housing for households who work or currently live in Mountain View. The main goal is to provide an affordable, safe, clean living environment for those families and individuals making a contribution to Mountain View and its residents. These Guidelines are issued pursuant to the City's Below-Market-Rate Housing Program (the "Program") found in Chapter 36 of the City Code.

### Applicability and Effective Date

The provisions of the City of Mountain View Below-Market-Rate Program shall apply to all residential developments with three (3) or more ownership units; five (5) or more rental units; or mixed-tenure (i.e., a combination of rental and ownership) projects of six (6) or more residential units except the following types of rental developments are exempt from the Program:

- a. "Gatekeeper" developments processed in accordance with City Code Sections 36.50.90, 36.52.20, and 36.52.55 for which project approval has been granted by April 28, 2018.
- b. All other developments for which a complete formal application has been submitted and determined complete by 5 p.m. on April 28, 2018.

These Guidelines are consistent with the Program. The provisions of the ordinance which created the BMR Program shall control to the extent any inconsistency with these Guidelines is identified. The Community Development Director may promulgate additional administrative and processing instructions that are consistent with these Guidelines.

### GENERAL REQUIREMENTS

#### A. Percentage Requirement

1. All residential ownership developments subject to the Program shall maintain at least ten percent (10%) of the total number of dwelling units within the development as affordable units, as required by the BMR ordinance and guidelines.
2. All residential rental developments subject to Program shall maintain at least fifteen percent (15%) of the total number of dwelling units within the development as affordable units as required by the BMR ordinance and guidelines.

B. Size of Project

The BMR requirement shall apply to residential developments with three (3) or more ownership units; five (5) or more rental units; or mixed-tenure projects of six (6) or more units.

C. In-Lieu Fees

The BMR in-lieu fee which is prescribed under Section 36.40.10(c) of the City Code may be paid under two circumstances. First, when the BMR obligation results in a fraction of a unit (i.e., less than one unit). Secondly, when the price of the homes in the development is too expensive to be practical for a BMR unit.

- For ownership units, the developer/owner will, upon close of escrow on the sale of each of the units in the subdivision, make an in-lieu payment to the City calculated as three percent (3%) of the actual sale price of that unit.
- Developments with ten (10) or more ownership homes, where the projected sale price is more than \$400,000, will be allowed to pay the in-lieu fee. The Community Development Director or designee will meet with applicants prior to the issuance of a building permit to make a determination of whether the development is required to pay an in-lieu fee or produce the units. The \$400,000 sale price ceiling will be adjusted annually to reflect changes in the costs of housing prices.
- For rental units, the in-lieu fee shall be \$34.57 per net new habitable square foot. This amount shall be adjusted annually based on the Consumer Price Index.

D. Alternative Mitigations

As an alternative to building the affordable housing units or paying the in-lieu fee, developers of market-rate residential projects may submit a request to meet their affordable housing obligations through other means, such as the dedication of land, the provision of other resources, or other alternatives. Such requests may be granted at the sole discretion of the City Council, if the City Council determines that such alternative will further affordable housing opportunities in the City to a greater extent than the affordable housing obligation.

E. Concurrent Development

All below-market-rate units in residential developments shall be constructed concurrently with or prior to the construction of market-rate units. In phased developments, the BMR requirement will be calculated on the basis of the whole development.

F. Location and Design of BMR Units

All BMR units shall be reasonably dispersed throughout the project and shall contain, on average, the same number of bedrooms and shall be comparable to the design of the market-rate units in terms of appearance, materials and finish quality of the market-rate units in the project. There shall not be significant identifiable differences between the BMR and market-rate dwelling units visible from the exterior. The size and design of BMR dwelling units must be reasonably consistent with the market-rate units in the development.

Internally, the BMR units may differ from market-rate units in the project by eliminating certain amenities, which are considered to be luxury items, in order to reduce cost. However, the exterior design of the units shall be consistent with other units in the project. For example, more expensive plumbing and lighting fixtures, hardwood floors and marble entries may be considered luxury items, and less expensive materials may be substituted. The following items shall be considered standard and may not be reduced or eliminated by the developer: dishwashers, garbage disposals, cooking facilities and laundry facilities (either on-site or in each individual unit). BMR units shall have access to all project amenities and recreational facilities available to market-rate units.

G. Targeted Households

All BMR rental units shall be rented only to qualified low-income households, and all BMR ownership units shall be sold only to qualified moderate-income households. The City or its designee will maintain a waiting list of qualified persons. Low-income household means a household whose income is between 50 percent and 80 percent of the median household income, adjusted for size, for Santa Clara County as published periodically by the State Department of Housing and Community Development. Moderate-income household means a household whose income is between 80 percent and 100 percent of the median household income, adjusted for size, for Santa Clara County as published periodically by the State Department of Housing and Community Development. Applicant incomes will be computed over a three (3) year period.

For ownership units, there will be asset limits in addition to income limits. Assets cannot exceed the purchase price of the BMR unit, excluding funds dedicated to Federally recognized retirement programs. Income and assets of applicants will be verified by the City or its designee.

The City or its designee will implement preferential selection procedures, pursuant to the following list of priorities, shown in rank order. Priorities will not be required if not permitted by State or Federal law or program restrictions.

H. Participant Priorities

Preference is given to eligible applicants for a BMR unit if they live or work in the City of Mountain View. The City or its designee may impose restrictions to ensure eligible households occupy units that are appropriate to the size of the household.

I. Term

BMR units shall be maintained as affordable housing for a period of at least fifty-five (55) years.

Recorded covenant and/or deed restrictions placed on each unit/complex pursuant to the program shall remain in effect for a period of fifty-five (55) years from the date of first occupancy of the unit/complex and shall become null and void upon the expiration of that period, unless it is extended by the developer in order to take advantage of incentives resulting from changes in public policy and programs. These deed restrictions shall be subject to the approval of the City Attorney and shall run with the land and not be affected by the sale of the unit or complex prior to the completion of the term of affordability.

J. No Density Bonus

Compliance with the provisions of the City's BMR Program does not entitle a residential development to a density bonus.

K. Applicant's Right to Refusal of Unit

An applicant for either a BMR rental unit or ownership unit has two opportunities to refuse a unit/development before being removed from the waiting list. Applicants will not be removed from the waiting list if they fail to qualify for a unit on the basis of income.

L. Determination of Rents for Rental Units

The monthly rental rate for each BMR unit shall be affordable to households within the range of fifty percent (50%) to eighty percent (80%) of County median income. The affordable monthly rents are based on rental levels that do not exceed thirty percent (30%) of qualifying tenant's gross monthly income. The eligible household income range of 50 percent to 80 percent of County median income may be adjusted annually to reflect adjustments in the median household income published periodically by the State Department of Housing and Community Development for Santa Clara County.

The City or its designee will receive a forty-five (45) day advance notification from the owner or his/her agent of an impending vacancy of a rental BMR unit. First priority for occupancy will be given to eligible persons on the City's waiting list. The selected persons from the City's waiting list shall be allowed up to thirty (30) days to move into the unit after it is ready for occupancy. The actual BMR rental units within a complex do not need to be permanently assigned to the program but may float as long as the required number of units are always available and that the size of the units is consistently maintained (e.g., a one-bedroom unit cannot be substituted for a two-bedroom unit).

M. Determination of Sale Prices for Ownership BMR Units

It is the policy of the City that BMR ownership units should, to the degree possible, serve all income levels from 80 percent to 100 percent of median income. The Community Development Director or designee shall work with the developer/owner to ensure that the sales prices of BMR ownership units serve the broadest possible range of eligible incomes. For example, if five units are required, the developer will make one unit available for persons earning 80 percent, one up to 85 percent, one up to 90 percent, one up to 95 percent and one up to 100 percent of median income. There shall be no building permit issued for a residential development until the purchase price for BMR ownership units offered for sale has been approved in writing by the developer and the Community Development Director or designee. If only one BMR ownership unit is required, it shall be affordable to a four-person household earning up to 90 percent of the median income.

N. Subletting or Rental of Units Prohibited: Exceptions

BMR units shall not be sublet. If the owner/tenant experiences a bona fide hardship, the unit may be rented or sublet with the advance written permission from the Community Development Director or designee. In no event shall the hardship exemption exceed six (6) months.



O. Primary Place of Residence

Each purchaser of a BMR ownership unit shall certify, prior to close of escrow in a form acceptable to the City or its designee, that said unit is being purchased under special restrictions applicable to the BMR Program and shall be maintained as the purchaser's primary place of residence. Failure to maintain eligibility for homeowners property tax exemption shall be construed to mean that the inclusionary unit is not the primary place of residence of the purchaser. However, if special conditions exist, in the opinion of the Director, an ownership unit may be leased for a period not to exceed six (6) months, but only because of hardship circumstances and only with the express written permission from the Community Development Director or designee.

P. City's Right of First Refusal, Resale Provisions and Deed Restrictions

All BMR units shall be subject to deed restrictions, covenants and conditions which include a right of first refusal in favor of the City for a period of fifty-five (55) years under which the City or its designee will be entitled to purchase the property at the lower of: (1) market value; or (2) the purchase price paid by the seller, plus one-third of the increase (during the period of seller's ownership) in a Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics, plus certain other equitable adjustments; or (3) an amount equal to a price affordable to a household earning 100 percent of median income. The deed restrictions will also prohibit sales or transfers of the property except with the written consent of the City and at a price computed as above. The only exceptions to the City-imposed restriction that the BMR unit be sold to a City approved BMR household will be a demonstrated inability to obtain a qualified buyer within a 180-day period or the expiration of the 55-year term of the unit and the City's determination not to exercise its right of first refusal.

In the event of an exempt sale due to the inability to obtain a qualified buyer within 180 days or a sale after the expiration of the 55-year term of a unit, the seller will be entitled to receive the lesser of: (a) appraised value; or (b) the purchase price paid by the seller plus one-third of the increase (during the seller's ownership) in the Consumer Price Index, plus certain other equitable adjustments as specified in the deed restrictions; or (c) an amount equal to a price affordable to a household earning 100 percent of median income. The balance of the proceeds shall be paid to the City of Mountain View to be deposited in the City's Housing Fund.

The deed restrictions and conditions shall contain such other provisions as are considered necessary by the City to implement these Guidelines and applicable

ordinances and the City may require that an additional notice or other document or documents be recorded to provide notice that the unit is subject to the BMR Program and restrictions. A reference to the deed restrictions and conditions shall be included in all deeds or conveyances of BMR units. Such deeds or conveyances shall be recorded in the County Recorder's Office, and a conformed copy shall be sent to the Community Development Department, City of Mountain View, P.O. Box 7540, Mountain View, California, 94039-7540.

Q. Annual Verification of Renter Eligibility

The household income of each renter of a BMR unit shall be verified at least annually by the City or its designee to confirm the household's continued eligibility for the unit. BMR households failing to cooperate in the annual review shall be deemed to be ineligible for the program.

R. Forfeiture of Proceeds for Illegal Sale and/or Unapproved Rental of a BMR Unit

Any individual who sells or rents a restricted unit in violation of the provisions of the City's BMR Program shall be required to forfeit all monetary amounts so obtained in excess of the allowed resale price or rental rates as set forth in these Guidelines. Such amount shall be added to the City's Housing Fund. Furthermore, violations of these provisions may result in civil or criminal prosecution. If the City or its designee are required to enforce the provisions of the BMR ordinance, Guidelines or the deed restrictions or covenants, the City shall recover its attorney's fees and costs for such enforcement effort.

S. Management Agreement

The City may enter into an agreement with an outside management agency to administer and manage all or parts of the City's BMR Program.

T. Subordination Restriction

The City agrees to subordinate the BMR Program requirements to any construction lender and to the lender for the mortgage secured by the first deed of trust to the extent of ninety percent (90%) of the below-market-rate value. The City shall have the nonexclusive right to cure a default to preserve the below-market-rate program requirements. The subordination agreement shall be subject to the review and approval of the City Attorney.

U. Lease Agreement

Each BMR tenant shall be offered the opportunity to enter into a lease, which has a minimum term of one (1) year. Such offer must be made in writing. If the tenant rejects the offer, such rejection must also be in writing. A lease may be renewed subject to the BMR ordinance and Guidelines, upon the mutual agreement of both parties.

The City may contract with an outside agency to screen applicants for the inclusionary program and to refer eligible households to the developer or owner. The developer or owner shall retain final discretion in the selection of the eligible households provided that the same rental terms and conditions (except rent levels and income) are applied to tenants of inclusionary units as are applied to the other tenants and that such selection shall comply with State and Federal law.

V. Housing Fund

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

W. Appeals Process

Appeals of staff determinations based on these Guidelines must be in the form of a written request by the appellant. The request should be addressed to the Community Development Director. The Community Development Director or designee will convene a meeting of the Appeal Committee consisting of representatives of the City Manager's Office, City Attorney's Office, and Community Development Department to hear the appeal and make a recommendation. If the appellant chooses to appeal the staff committee recommendation, the appeal will be forwarded to the City Council within forty-five (45) days for a final ruling. All City Council rulings on the appeal are final. The City may establish cost recovery fees for appeals.

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