

## CITY OF MOUNTAIN VIEW

### ENVIRONMENTAL PLANNING COMMISSION STAFF REPORT FEBRUARY 5, 2025

#### 6. PUBLIC HEARINGS

##### 6.1 Code Amendment to Chapter 36 (Zoning)—Below-Market-Rate Housing Program

##### RECOMMENDATION

That the Environmental Planning Commission recommend the City Council:

1. Adopt an Ordinance of the City of Mountain View Amending Mountain View City Code Sections 36.40.05, 36.40.10, 36.40.15, and 36.40.20 To Make Clarifying Modifications, and Adding Section 36.40.16 Governing Rent Increases For Below Market Rate Units to the Mountain View City Code (Exhibit 1 to the EPC Staff Report).
2. Find that pursuant to California Code of Regulations section 15060(c)(2), the proposed Code amendments are not subject to the California Environmental Quality Act because they will not result in a direct or reasonably foreseeable indirect physical change in the environment.

##### 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. A newspaper notice has been circulated for this item.

##### BACKGROUND/DISCUSSION

In December 2023, the City completed a review of the City's Below-Market-Rate Affordable Housing Program (BMR Program) to meet Housing Element requirements. Council supported staff's recommendations and provided direction to staff to implement other BMR provisions across five criteria, discussed further below.

Since that time, staff has undertaken next steps to further evaluate and develop updates to the BMR Program, such as analyzing options for physical accessibility features/universal design; garnering stakeholder feedback through surveys and roundtables; and working with the City's economic consultant to conduct research related to additional alternative mitigation requirements and incorporating Affirmatively Furthering Fair Housing criteria.

Due to the timing needed to complete the items noted above and further discussed below, as well as advancing other City projects with key deadlines—including other Housing Element items—it is anticipated that a comprehensive set of BMR ordinance amendments will be brought forward for Council consideration in Q3/Q4 2025. However, staff recommends processing a focused set of ordinance modifications at this time. Staff has continued to review BMR projects, and these recommended modifications will assist with project review and providing applicants greater clarity as they advance their projects.

### **Summary of December 2023 Review**

The City's BMR Program includes periodic reviews to evaluate the program's efficacy, ensure that the program is meeting its objectives, and make relevant policy changes. The City's state-certified 2023-31 Housing Element incorporates this strategy in Program 1.9—BMR Program Review, which requires two reviews (December 2023 and December 2028 deadlines).

The first BMR Program review was completed via a City Council [Study Session](#) held on December 12, 2023. The review addressed the five-criteria outlined in the Housing Element with a summary of staff's analysis/recommendations and Council discussion as follows:

**1. Continue the BMR Program, as revised in 2019, to include more opportunities for inclusionary units as opposed to fees.**

Summary: Staff provided data indicating that the current market-rate residential pipeline in the City is estimated to result in significantly more BMR units under the current version of the BMR Program than under the prior version of the program, which was modified in 2019. Council supported the continuation of the BMR Program.

**2. Review the 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, and affordability levels.**

Summary: As part of Criterion No. 1, staff noted that the current BMR Program is furthering affordable housing production across unit types in terms of both unit sizes and affordability levels. Staff recommended evaluating program requirements to increase the physical accessibility of the BMR units which could help meet special needs. Council supported this recommendation.

**3. Assess whether the BMR Program facilitates mobility and access to opportunity and if any improvements could be made to increase mobility and access to opportunity.**

Summary: The BMR Program facilitates mobility and access to opportunity by requiring on-site BMR units integrated with market-rate units, equitable distribution of BMR unit sizes within the development, and equitable distribution of BMR unit locations within the development. Staff recommended options to enhance mobility and access to opportunity under alternative mitigations that cities are required to provide to developers, including evaluating incorporating Affirmatively Furthering Fair Housing requirements. Council supported this recommendation.

**4. Analyze potential policy changes based on best practices, new laws, or unanticipated program outcomes.**

Summary: Staff analyzed and made several recommendations to refine alternative mitigation measures. Council discussed adding acquisition/preservation and removing in-lieu fees as an option and supported staff recommendations for adding criteria to evaluate alternative mitigations and charging developers for staff time and cost-recovery fees for implementing a Request For Qualifications/Request For Proposals process for land dedications. Council also directed staff to explore appropriate escalators for the in-lieu fees for fractional units and benchmarking for alternative mitigations, establish a rationale for BMR Program applicability to various sized projects, and to review the City's Homeowner Association (HOA) reserve fee calculations. Council directed staff to further explore these best practices.

**5. Identify potential cleanup in guidelines/policies/ procedures.**

Summary: Council supported the following staff-recommended modifications:

- Explicitly state a 3% maximum allowable annual rent increase for in-place tenants.
- Clarify the definitions for income categories.
- Clarify that the BMR requirements are based on the income levels associated with the BMR units and not the actual incomes of the households.
- Clarify Area Median Income (AMI)/weighted average requirements for ownership projects.
- Update provisions to the HOA reserve requirement.

- Update the department administering the BMR Program.

Council supported these recommendations.

## **ANALYSIS**

As noted in the Background section, the ordinance amendments recommended at this time are focused on Council-supported ordinance modifications to enhance project review and provide project applicants greater clarity regarding key BMR requirements, specifically three items under Criterion No. 5 and one additional clean-up item identified by staff subsequent to the City Council study session:

- Include a 3% maximum allowable annual rent increase for in-place tenants.
- Clarify definitions for income categories.
- Clarify unit rent calculations.
- Clarify the definition of “residential development”.

### **Include a 3% Maximum Allowable Annual Rent Increase for In-Place Tenants**

The BMR Program has implemented a maximum annual rent increase of 3% for in-place (i.e., existing) tenants based on policy. However, the allowable in-place rent increase is currently only recorded on the BMR regulatory agreements for projects and not currently stated in the BMR ordinance or Administrative Guidelines. This update will explicitly state that the maximum allowable annual rent increase for in-place tenants is 3%.

The ordinance update further includes the following provisions, which are common best practices:

- More than one rent increase over a 12-month period may not be imposed, and
- A 30-day written notice to tenants informing them of the rent increase must be provided.

### **Clarify Definitions for Income Categories**

The BMR Program currently includes the following income category definitions:

- Very Low-Income: 50% AMI or less
- Low-Income: 50% AMI to 80% AMI
- Moderate-Income: 80% AMI to 120% AMI

However, when the same AMI straddles two income categories, it can cause confusion. For example, 80% AMI is currently part of the definitions for the Low-Income and Moderate-Income categories.

The modified definitions for the income categories are proposed as follows:

- Very Low-Income: 50% AMI or less (no change)
- Low-Income: greater than 50% AMI up to 80% AMI
- Moderate-Income: greater than 80% AMI up to 120% AMI

### **Clarify of Unit Rent Calculations**

The intent of the BMR Program is to establish requirements based on the AMI levels designated for each BMR unit, not the actual incomes of the tenant. For example, an 80% AMI unit could be occupied by a household whose income is 70% AMI. The initial rent would be based on the 80% AMI level for the unit (adjusted for household size based on the number of bedrooms for each unit) and not on the 70% AMI of the household's income. However, the BMR ordinance and Administrative Guidelines are not always clear whether the requirements are based on the AMI designations of the BMR units or the incomes of the BMR household. This modification will allow developers to clearly understand the requirements at the time of project application and propose the income levels and associated rents of the BMR units to meet the program requirements. Additionally, basing the rents on the AMI levels of the units is the standard practice for BMR programs across jurisdictions. Developers determine the economic feasibility of their projects on the AMI level of the units, and administering BMR rents based on the household's actual income provides significant uncertainty and administrative complexity. The BMR Program will be updated to clarify that the requirements are based on the income levels associated with the BMR units and not the actual incomes of the households.

### **Clarify Definition of Residential Development**

The definition of "Residential Development" is being amended to clarify the three types of developments subject to the BMR Program, namely, developments that : 1) create one or more dwelling units, 2) convert nonresidential uses to residential uses, or 3) convert residential units from rental units to ownership units.

**NEXT STEPS****Clean-Up Items**

Date	Council/Commission	Agenda Section	Topic
February 25, 2025	City Council	Public Hearing	Ordinance First Reading
March 25, 2025	City Council	Consent	Ordinance Second Reading

The ordinance will become effective on April 24, 2025, 30 days following the second reading.

**Comprehensive Amendments**

Remaining items from Criterion No. 1 through Criterion No. 5 above is anticipated to move forward as follows:

Date	Council/Commission	Agenda Section	Topic
Fall 2025	City Council	New Business	Staff findings and recommendations relating to Council's direction
Fall/Winter 2025	Environmental Planning Commission	Public Hearing	Draft Ordinance
Winter 2025	City Council	Public Hearing	Ordinance First Reading
Winter 2025	City Council	Consent	Ordinance Second Reading

Specific meeting dates will be determined later in the year. It is anticipated that the effective date of the comprehensive ordinance amendments will be in early 2026.

**CONCLUSION**

The proposed amendments to the BMR Program aim to clarify key aspects of the program, including rent increase limits, income category definitions, and unit rent calculations. These updates are designed to improve the program's effectiveness, ensure clearer guidance for developers, and align with the City's housing goals. The proposed clean-up items will be reviewed and adopted by the City Council in early 2025, with the comprehensive revisions

to follow later in the year. This two-step ordinance amendment process will allow key clarifications/cleanups to be implemented sooner to streamline project review and enhance clarity for developers, while providing sufficient time to complete the comprehensive amendments in a thoughtful manner in response to Council's direction from the December 2023 Study Session.

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Exhibit: 1. Draft Ordinance Amending Chapter 36 (Below-Market-Rate Housing Program)