



## COUNCIL REPORT

**DATE:** November 4, 2025

**CATEGORY:** New Business

**DEPT.:** Housing Department

**TITLE:** **Recommended Amendments to the  
Below Market Rate Housing Program –  
Housing Element Program 1.9**

### **RECOMMENDATION**

Approve the recommended amendments for the City's Below Market Rate Housing Program and direct staff to bring back Ordinance amendments for Council consideration.

### **EXECUTIVE SUMMARY**

On December 12, 2023, Council held a Study Session to review the efficacy of the City's Below Market Rate Housing Program ("BMR Program" or "BMR Ordinance" will be used interchangeably for the remainder of this memo), 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, 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 preparing the Ordinance amendments for Council approval.

The purpose of this Council item is to have additional discussion regarding the recommended amendments per the December 2023 Study Session, as well as to consider additional amendments that staff have identified after the Study Session. Collectively, the recommended amendments include:

- Adopt requirements for increasing the physical accessibility of BMR units.
- Add 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.

- Incorporate 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.
- Amend the in-lieu fee rates and use the California Construction Cost Index (CCCI) instead of the Consumer Price Index (CPI) for annual escalations.
- Implement remaining clean-up items (except for the Homeowner Association (HOA)-related clean-up item).
- New recommended amendments (identified after the December 12, 2023 Study Session):
  - 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).

Based on Council direction, BMR Ordinance amendments will be brought forward for Council consideration late Q1 2026/early Q2 2026.

## **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**

| <b>Requirement</b> | <b>Criteria</b>                                                                                                                                                                                                                                                            |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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> </ul> |

| Requirement                         | Criteria                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | <ul style="list-style-type: none"> <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> <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>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

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

The City's State-certified 2023-21 Housing Element Program 1.9 requires periodic review of the BMR Program. The deadline to complete the first review was December 31, 2023.

On [December 12, 2023](#), City Council held a Study Session to complete the first review by the required deadline. Staff and the City's consultant Economic and Planning Systems (EPS) evaluated the five criteria outlined in the Housing Element, and benchmarked seven comparison cities, including Cupertino, Palo Alto, San Jose, Santa Clara, Sunnyvale, Redwood City, and San Mateo.

Overall, the review concluded that the BMR program as updated in 2019 has been effective in facilitating a greater number and diversity of BMR unit based on new market-rate projects in the City's pipeline. Therefore, staff focused the recommended amendments on a narrower subset of items within the five Housing Element criteria primarily related to: options to enhance the physical accessibility of BMR units; additional requirements for alternative means of compliance,

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

using a fair housing framework to achieve equitable development goals; and clean-up items. The following is a summary of the discussion.

*Housing Element Evaluation Criterion 1: Continue BMR program, as revised in 2019, to include more opportunities for inclusionary units as opposed to fees.*

Discussion Summary:

- Staff provided data indicating that the 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 as revised in 2019.

*Housing Element Evaluation 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.*

Discussion Summary:

- As part of Criterion 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.
- However, the BMR Program has not specifically addressed the special needs populations. Unlike 100% affordable housing projects that often provide case management and services for special needs populations, market-rate projects with BMR units do not typically provide this service and property management lacks this expertise.
- Therefore, staff recommended that increasing the physical accessibility of BMR units be the focus of Housing Element Criterion 2. Council supported this recommendation.

*Housing Element Evaluation 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.*

Discussion Summary:

- “Mobility” and “access to opportunity” are terms related to State Affirmatively Furthering Fair Housing (AFFH) requirements.

- AFFH refers to the ability of lower-income individuals and households to have choices regarding where they live, particularly in geographic areas known as “Highest Resource Areas” that are located near services, amenities, and infrastructure such as transit, health care, grocery stores, schools, parks, employment, and other resources, i.e., areas with access to opportunity.
- The BMR Program facilitates mobility and access to opportunity through the objective standard of integrating BMR units on-site with market-rate units, the requirement that BMR unit sizes are proportionate to the market-rate unit sizes, and the requirement that the BMR units be equitably distributed throughout the market-rate project.
- Council supported staff’s recommendations to focus Criterion 2 on enhancing mobility and access to opportunity related specifically to alternative compliance options, as follows:
  - Add general language that all alternative compliance proposals must demonstrate facilitating mobility and access to opportunity to meet AFFH requirements.
  - Add specific AFFH requirements to each alternative compliance option. For example, the land dedication option should include criteria to be in close proximity to the market-rate development and/or be located in a High Resource Area.
  - Evaluate incentives for affordable housing in areas designated in the Housing Element such as in Program 2.6 related to AFFH, which requires the City to adopt incentives and zoning to facilitate property owners south of the El Camino Real Precise Plan to support affordable housing, such as dedicate land or build affordable housing.

*Housing Element Evaluation Criterion 4: Potential policy changes based on best practices, new laws, or unanticipated program outcomes.*

Discussion Summary:

- As with Criterion 3, the discussion during the December 2023 Study Session regarding Criterion 4 focused on modifications to alternative compliance options.
- Council supported the following staff recommendations:
  - Clarify that the value of the alternative compliance should be *no less than* providing units on-site. (Currently, the BMR Program requires that the alternative compliance option be of greater value than the on-site BMR units.)
  - Use the BMR in-lieu fee to calculate the equivalency value.

- Council provided the following additional direction:
  - Alternative compliance options should be allowed for both rental and ownership projects. (Cities are legally required to provide alternative means of compliance for rental projects but have the discretion to allow them for ownership projects.)
  - Keep land dedication and off-site development as alternative compliance options, and add acquisition/preservation as a third option. (State law requires that cities provide at least two alternative compliance options.)
  - Remove in-lieu fees and the catch-all option for an applicant to propose other options not specifically listed. (The current BMR Program includes a catch-all provision that allows applicants to propose other options not specifically listed in the BMR Program. The catch-all option allows innovative approaches but are complicated and time-intensive for staff to analyze because each one is unique.)
  - Evaluate options other than the Consumer Price Index (CPI) as the escalator for annual in-lieu fee adjustments. (The CPI may not reflect the true cost of developing and delivering a BMR unit.)

*Housing Element Evaluation Criterion 5: Potential Cleanup in Guidelines/Policies/Procedures.*

Discussion Summary:

- Council supported six cleanup items recommended by staff:
  - a. **Requirements based on income levels designated to units:**

Clarify that the calculations of rent and sales prices are based on the income levels associated with the BMR units and not the actual incomes of the households.
  - b. **AMI level and associated income ranges:**

The definitions for the income categories will be modified as follows:

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

**c. Allowable annual rent increases for in-place tenants:**

Set a 3% annual rent cap for in-place tenants.

**d. Clarify that ownership projects can have a weighted average AMI equal to or less than 100% AMI.**

Ownership projects can have a weighted average equal to or less than 100% AMI as long as the project includes an HOA reserve for BMR units designated as 80% AMI or less. (Currently, the BMR Program requires ownership projects to have a weighted average AMI equal to exactly 100% AMI. However, it is difficult for projects to meet 100% AMI exactly, especially for density bonus projects, which requires lower AMI levels.)

**e. Update the administering department**

References to Community Development and Director will be updated to reflect the Housing Department and Director. (The Housing Department is now the administering department for the BMR Program.)

**f. Administrator of HOA reserve**

The BMR Program will be updated to clarify that the applicant pays the HOA reserve to an administrator and not to the City. (The City is not and does not seek to be an HOA administrator.)

Other Input

Discussion Summary:

- Besides the five Housing Element criteria, staff asked Council if it had any additional input.
- Council asked staff to establish a rationale for BMR Program applicability to various sized projects, specifically for one- to six-unit projects, which are subject to payment of fractional in-lieu fees.

**Two-Phase Ordinance Modification Process**

Council asked staff to further evaluate the discussion items presented on December 12, 2023, and bring back options for additional discussion prior to preparing the Ordinance amendments for Council approval, which is the purpose of this Council item. However, items a through c in Criterion 5 were ready to be updated sooner.

Therefore, on [February 25, 2025](#), staff introduced the first set of BMR Ordinance amendments focused on Criterion 5 clean-up items a through c, 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. Additionally, the amendments have enhanced project review and provided developers greater clarity regarding key BMR requirements.

Tonight’s item is for Council to review recommended amendments for the remaining items discussed in December 2023, and are discussed in detail in the Analysis section below. Based on Council’s direction, remaining BMR ordinance amendments will be brought forward for Council consideration in Q1 2026 to complete the two-phase modification process.

### **Stakeholder Outreach**

After the December 2023 Study Session, staff implemented the following outreach efforts to inform developers (primarily market-rate), service providers, and BMR homeowners of the BMR review process and receive input, with particular emphasis on physical design given its potential impact on development costs:

- May 2024: Service provider roundtable discussion regarding physical design.
- August 2024: Two Housing Department developer roundtable meetings.
- September 2024: Survey to developers regarding physical design.
- November 2025: Update at Community Development Department Roundtable.
- April 2025 – May 2025: Additional phone outreach to developers regarding physical design.
- May 2025: Second update at Community Development Department Roundtable.
- May 2025: August 2025: Outreach to developers to review construction costs.
- October 2025: Survey and outreach to BMR homeowners regarding HOA fees.
- Informal conversations with developers through discussions regarding their specific projects.

### **ANALYSIS**

The Analysis section discusses in detail the remaining items from the Council direction provided in December 2023, including physical accessibility of BMR units (Criterion 2), additional alternative mitigation requirements including AFFH (Criterion 3 and 4), and remaining cleanup

items (Criterion 5). After the December 2023 Study Session, staff and the City’s consultant conducted due diligence, reviewed comparable jurisdictions, and evaluated options. Additionally, staff have identified additional amendments for Council consideration, which will be discussed below.

### Updated Pipeline Data

As noted in the Background section under Housing Element Criterion 1 and 2, the BMR program as updated in 2019 has been more effective in facilitating a greater number and diversity of BMR units than the prior version. Since it has been two years since the December 2023 Study Session, more current pipeline data is provided here to demonstrate that the 2019 BMR Program continues to meet the objective standard of facilitating inclusionary units rather than fees.

**Table 2. Increase in BMR Units in Pipeline – 2023 to 2025\***

|                            | <b>December 2023</b> | <b>November 2025</b> | <b>% Increase</b> |
|----------------------------|----------------------|----------------------|-------------------|
| <b>BMR Rental Units</b>    | 169                  | 268                  | 60%               |
| <b>BMR Ownership Units</b> | 46                   | 72                   | 57%               |
| <b>Total Pipeline</b>      | 215                  | 340                  | 58%               |

\*Does not include projects the have pursued or are pursuing alternative compliance or Builder’s Remedy. Numbers reflected in this table may differ from those presented in 2023 as some projects shifted from on-site BMR units to an alternative compliance.

Additionally, since December 2023, 30 new BMR rental units have been constructed, bringing the total number of BMR units in the City from 186 to 216.

### **Recommended Amendment: Housing Element Criterion 2 - Physical Accessibility of BMR Units**

As discussed, Council supported staff’s recommendation to focus Criterion 2 on options to increase the physical accessibility of BMR units. After the December 2023 Study Session, staff and the City’s consultant conducted extensive due diligence,<sup>2</sup> and found the following:

- In California, approximately 13% to 18% of low-income households have a physical impairment, such as hearing, visual, or ambulatory.<sup>3</sup>

<sup>2</sup> Due diligence included: 1) Stakeholder meetings and one-on-one interviews, including with public service providers (such as those receiving Community Development Block Grant (CDBG) funding from the City, including Silicon Valley Independent Living Center and Rebuilding Together Peninsula) and market-rate and affordable developers; 2) Internal review with the Community Development Department and the Building Division to review building code requirements, universal design options, information from the State Housing and Community Development Department, etc.; 3) Online survey (who, when, how many respondents); 4) Roundtable; 5) Research on rate and types of disabilities experienced by low-income households; and 6) Administrative impact in City staff.

<sup>3</sup> HCD People with Disabilities [People with Disabilities | California Department of Housing and Community Development](#) (September 26, 2025)

- Current State building codes – which includes relevant federal requirements – already mandate comprehensive requirements to address physical accessibility for new residential projects including multi-family projects, such as sinks that are mounted no higher than 34 inches or doors that can swing a minimum of 90 degrees, in a subset of units within a project designated as “accessible.”
- Additional accessibility features beyond State and federal requirements can vary greatly in scope and cost, there is no ‘one-size fits all’ approach. Staff received developer input that the desire for additional accessibility features would likely need to be optional and paired with incentives to encourage developer participation. While some developers opt to incorporate additional features upfront on a voluntary basis, other developers may opt to construct the units in a manner that would allow them to be adapted and have features installed after the units are occupied, i.e., an “adaptable” unit.
- Some smart-home features such as smart lights or plugs are low-cost features that can be installed by the household, which can be particularly impactful for seniors and persons with disabilities.
- There are administrative challenges of implementing additional City requirements for accessibility features beyond State or federal requirements. For example, Assembly Bill (AB) 130 prohibits local amendments to residential building standards that exceed state minimums until 2031. Additionally, implementing BMR-specific code changes to require more accessibility features may increase development costs and be more complex to administer, placing additional burden on staff’s already limited capacity during the building permit and plan-check review processes.

In sum, State and federal accessibility requirements are already comprehensive, adding local requirements may be challenging or infeasible at this time, and approximately 13% to 18% of low-income households have a disability. **As such, to the extent that a developer designates units within a project as “accessible” or “adaptable,” staff recommends 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 the designated units.** This streamlined approach would ensure that at least one accessible or adaptable BMR unit is available in a project, would not increase development costs, and would be administratively easier to incorporate into the City’s review process than creating additional requirements beyond what is already required in State/federal codes and laws.

**Recommended Amendment: Housing Element Criterion 3 and 4 – Additional Requirements for Alternative Means of Compliance**

As discussed in the Background section, Housing Element Criterion 3 and 4 focus on BMR Ordinance amendments related to additional requirements – including AFFH criteria – that an applicant/developer (terms to be used interchangeably) must meet if an alternative means of compliance is proposed. These changes 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 sufficiently review a development application in compliance with the BMR Program and State streamlined review requirements.

The following general requirements will be made to apply to the alternative means of compliance section of the BMR Ordinance:

- Add acquisition/preservation of existing housing units – including those covered under the CSFRA – to the list of options.
- Remove in-lieu fees and the catch-all option from the list of alternative compliance options.
- 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 needs to meet via land dedication, off-site development, or acquisition/preservation.<sup>4</sup>
- An applicant’s proposal must demonstrate how the proposed alternative compliance facilitates mobility and access to opportunity to meet AFFH requirements.
- 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

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<sup>4</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.

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 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, sufficient economic contribution by the developer to successfully deliver the BMR project, comprehensive proforma/financing plan and feasibility analysis 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.

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 option instead of building on-site BMR units integrated with market-rate units. Based on experience with recent projects, alternative compliance 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 Requirements for Land Dedication

In addition to general alternative compliance requirements, staff recommends additional requirements for the land dedication option specifically, consistent with Council direction from the December 2023 Study Session.

Table 3 provides a summary of existing criteria for a land dedication proposal that applicants need to meet, and staff recommendations for new/updated criteria identified in **bold** text.

**Table 3: Existing and Recommended New Criteria for Land Dedication Proposals**

| <b>Standard</b>                                     | <b>Requirement</b>                                                                                                                                                                                                                                                                                                                                 | <b>Rationale</b>                                                                                                                                                                          |
|-----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Parcel Size and Capacity<br>(Existing - no changes) | <ul style="list-style-type: none"> <li>Applicant must demonstrate that the site can reasonably accommodate the required number and mix of units under the base density allowed; minimum parcel size of 0.75 acres.</li> </ul>                                                                                                                      | <ul style="list-style-type: none"> <li>Ensures that the site can deliver the equivalent number of units as the on-site unit requirement.</li> </ul>                                       |
| <b>Location (new)</b>                               | <ul style="list-style-type: none"> <li><b>Meet one of the following:</b> <ul style="list-style-type: none"> <li><b>Within ½ mile of the primary project</b></li> <li><b>South of El Camino Real</b></li> <li><b>In El Camino Precise Plan</b></li> <li><b>In HCD-designated “Highest Resource Area”</b></li> </ul> </li> </ul>                     | <ul style="list-style-type: none"> <li>Advances AFFH goals.</li> </ul>                                                                                                                    |
| Environmental Conditions<br>(Existing – no changes) | <ul style="list-style-type: none"> <li>Applicant to submit environmental conditions reports including, but not limited to, Phase I and Phase II</li> <li>Must perform any necessary remediation prior to conveyance</li> </ul>                                                                                                                     | <ul style="list-style-type: none"> <li>Ensures site is free from contamination and risk. Places the financial responsibility onto developer rather than the City.</li> </ul>              |
| Special Conditions<br>(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> | <ul style="list-style-type: none"> <li>Ensure the dedicated site offers comparable development conditions to the main project site and does not impose disproportionate costs.</li> </ul> |
| Site Infrastructure<br>(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—and be consistent with Precise Plan standards (if applicable).</li> </ul>                                                                                              | <ul style="list-style-type: none"> <li>Ensures the parcel is fully serviceable, development-ready and that the cost of site infrastructure is not passed on to the City.</li> </ul>       |
| <b>Feasibility and Financing Plan (new)</b>         | <ul style="list-style-type: none"> <li><b>Applicant must submit a feasibility and financing analysis with their Compliance Plan that:</b></li> </ul>                                                                                                                                                                                               | <ul style="list-style-type: none"> <li>Facilitates staff review of project feasibility and</li> </ul>                                                                                     |

| Standard                  | Requirement                                                                                                                                                                                                                                                                                                                                                                                          | Rationale                                                                                                                                                                                       |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                           | <ul style="list-style-type: none"> <li>– <b>Demonstrates the value of the alternative compliance aligns with the in-lieu fee equivalency.</b></li> <li>– <b>Includes a City-led appraisal.</b></li> <li>– <b>Provides a comprehensive pro forma, including secured or potential funding/financing.</b></li> <li>– <b>Identifies any additional developer contribution, if applicable.</b></li> </ul> | adequacy of developer contribution(s).                                                                                                                                                          |
| Cost Recovery (new)       | <ul style="list-style-type: none"> <li>– <b>Applicant shall provide a financial contribution (\$950,000) to offset the City's estimated cost of soliciting, selecting, and negotiating with an affordable housing developer.<sup>5</sup></b></li> </ul>                                                                                                                                              | <ul style="list-style-type: none"> <li>– Cost recovery for staff time and other administrative costs associated with a land dedication project, such as developer selection process.</li> </ul> |
| Timing of Land Dedication | <ul style="list-style-type: none"> <li>– Dedicated site and any required contribution must be transferred to the City prior to the issuance of the first building permit for the entire residential development.</li> </ul>                                                                                                                                                                          | <ul style="list-style-type: none"> <li>– Ensures the alternative compliance obligation is met upfront consistent with past practice.</li> </ul>                                                 |

### Specific Requirements for Off-Site Development

Table 4 provides a summary of existing criteria for an off-site development proposal that applicants need to meet, and staff recommendations for new criteria in alignment with Council direction. Additionally, the new criteria are informed by learnings from recent projects that have included off-site development of BMR units, such as The Sevens and 685 W. Middlefield.

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<sup>5</sup> Although this is a new requirement, this cost recovery contribution has already been implemented as part of the Fiscal Year 2025-26 Master Fee Schedule update.

**Table 4: Existing and Recommended New Criteria for Off-Site Development Proposals**

| <b>Standard</b>                                    | <b>Requirement</b>                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>Rationale</b>                                                                                                                                                                                                                                |
|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Location (updated)</b>                          | <b>Meet at least one of the following:</b> <ul style="list-style-type: none"> <li>– <b>Adjacent to market-rate project (same or separate parcel okay)</b></li> <li>– <b>Within ½ mile of market-rate project</b></li> <li>– <b>South of El Camino Real</b></li> <li>– <b>In El Camino Precise Plan</b></li> <li>– <b>In HCD-designated “Highest Resource Area”</b></li> </ul>                                                                            | <ul style="list-style-type: none"> <li>– Advances AFFH goals.</li> </ul>                                                                                                                                                                        |
| <b>Suitability (existing - recommend deleting)</b> | <del>The proposed BMR units must be deemed suitable by the City based on</del> <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> | <ul style="list-style-type: none"> <li>– These requirements have been folded into other criteria.</li> </ul>                                                                                                                                    |
| <b>Access to Amenities (new)</b>                   | <b>If located within 750 feet of the primary project parcel boundary, off-site residents must be granted access to shared amenities at the market-rate site.</b>                                                                                                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>– Meets AFFH goals.</li> </ul>                                                                                                                                                                           |
| <b>Unit Requirement (updated)</b>                  | At least <b>15%</b> of the market-rate units in the primary project must be provided as off-site BMR units with comparable or improved proportionality.                                                                                                                                                                                                                                                                                                  | <ul style="list-style-type: none"> <li>– Reduced from 20% to align with on-site requirement of 15%.</li> <li>– Proportionality requirement achieves comparable or improved off-site development value relative to on-site BMR units.</li> </ul> |
| <b>Affordability Term (new)</b>                    | <b>Off-site units must remain affordable in perpetuity, unless a</b>                                                                                                                                                                                                                                                                                                                                                                                     | <ul style="list-style-type: none"> <li>– Perpetuity aligns with BMR provisions but provides flexibility</li> </ul>                                                                                                                              |

| Standard                                                               | Requirement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Rationale                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                        | <b>shorter term is required by a funding source.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | depending on requirements of other funding sources (such as tax credits).                                                                                                                                                                                                                                           |
| <b>Feasibility and Financing Plan (new)</b>                            | <b>Applicant must submit a feasibility and financing analysis with their Compliance Plan that:</b> <ul style="list-style-type: none"> <li>– Demonstrates the value of the alternative compliance aligns with the in-lieu fee equivalency.</li> <li>– Identifies any developer contribution to make project feasible (such as full contribution of land, equity, securing other funding/financing).</li> <li>– Provides a comprehensive pro forma showing secured or viable financing.</li> <li>– Confirms no City financial contributions are required.</li> </ul> | <ul style="list-style-type: none"> <li>– Review project feasibility.</li> <li>– 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.</li> </ul> |
| <b>Off-site developer partner (affordable housing developer) (new)</b> | <b>If the developer opts to partner with an affordable housing developer, the Compliance Plan must demonstrate:</b> <ul style="list-style-type: none"> <li>– the developer’s financial contributions</li> <li>– terms offered to the partner</li> <li>– process for partner selection and</li> <li>– partnership / agreement structure (Joint Venture Agreement, Partnership Agreement, MOU, etc.).</li> </ul>                                                                                                                                                     | <ul style="list-style-type: none"> <li>– Allows City to evaluate adequacy of developer contribution and partnership structure in alignment with approved project requirements.</li> </ul>                                                                                                                           |
| <b>City oversight of developer partnership (new)</b>                   | <ul style="list-style-type: none"> <li>– The City shall review and approve the financing terms of the partnership structure to ensure alignment with program requirements and equitable cost distribution.</li> </ul>                                                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>– Ensures alignment with approved project requirements.</li> </ul>                                                                                                                                                                                                           |

| Standard                               | Requirement                                                                                                                                                                                                                                                                                                                                               | Rationale                                                                                                                     |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
|                                        | <ul style="list-style-type: none"> <li>– <b>If developer elects to select a partner through a Request for Proposals process, City shall review and approve the RFP.</b></li> </ul>                                                                                                                                                                        |                                                                                                                               |
| Timing of delivery<br><b>(updated)</b> | <ul style="list-style-type: none"> <li>– 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.</li> <li>– <b>Failure to deliver the off-site units will default the market-rate project to the on-site 15% BMR requirement.</b></li> </ul> | <ul style="list-style-type: none"> <li>– Ensures off-site units are delivered concurrently with market rate units.</li> </ul> |

#### Specific Requirements 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 option under State law as referenced in AB 1505, 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 programs in comparison jurisdictions (San Jose, Cupertino, Sunnyvale, Palo Alto, and Redwood City) to identify best practices, options, and feasibility and financing approaches to inform recommendations for Council consideration. Additionally, staff reviewed the preservation and conversion of 660 Mariposa, which was covered under the CSFRA, 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 5 summarizes staff recommendations for this new alternative compliance option (no bold font is used because the entire option and table are new).

**Table 5: New Criteria for Acquisition/Preservation Proposals**

| <b>Standard</b>                                                    | <b>Requirement</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Rationale</b>                                                                                                                                                                    |
|--------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Eligibility                                                        | <p>Developers may fulfill BMR obligations by acquiring existing, unrestricted residential units off-site, rehabilitating them to required standards, and recording long-term affordability covenants.</p> <ul style="list-style-type: none"> <li>– Units may be rental or ownership, consistent with the tenure type of the market-rate project.</li> </ul>                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>– Per Council direction from December 2023 Study Session.</li> <li>– Can help address tenant displacement.</li> </ul>                        |
| Location                                                           | <p>Meet one or more of the following:</p> <ul style="list-style-type: none"> <li>– CSFRA units</li> <li>– Within ½ mile of market-rate project</li> <li>– South of El Camino Real</li> <li>– In El Camino Precise Plan</li> <li>– In a HCD-designated “Highest Resource Area.”</li> </ul>                                                                                                                                                                                                                                                                                                                                                            | <ul style="list-style-type: none"> <li>– Advances AFFH goals and Housing Element 2.6 to facilitate affordable housing in and mobility to highest resource neighborhoods.</li> </ul> |
| Rehabilitation and Physical Accessibility Assessment and Standards | <p>Compliance Plan must identify:</p> <ul style="list-style-type: none"> <li>– Building- and unit-level assessments of existing conditions.</li> <li>– Identification of required rehabilitation, repairs, or replacements, including seismic retrofits and accessibility requirements, based on applicable State and local requirements.</li> <li>– Soft-story buildings must be retrofitted for current seismic compliance based on the assessment.</li> <li>– Improvements that make acquired units comparable to the quality of on-site BMR units that would have otherwise been provided.</li> <li>– Estimated rehabilitation costs.</li> </ul> | <ul style="list-style-type: none"> <li>– Ensures housing quality, habitability, long-term physical viability, and comparability with on-site BMR units.</li> </ul>                  |

| Standard                                                  | Requirement                                                                                                                                                                                                                                                                                                                                                                                 | Rationale                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affordability                                             | <ul style="list-style-type: none"> <li>– <b>Rental:</b> Average affordability at or below 65% AMI; max 80% AMI.</li> <li>– <b>Ownership:</b> Average affordability at or below 100% AMI; max 120% AMI.</li> </ul>                                                                                                                                                                           | <ul style="list-style-type: none"> <li>– Same affordability levels as on-site BMR units.</li> </ul>                                                                                                                                                                                                                                                                                         |
| Unit Count / Bedrooms                                     | <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>                                                                            | <ul style="list-style-type: none"> <li>– Acquisition projects typically involve older building, usually with smaller units relative to new projects.</li> <li>– 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 relative to market rate mix.</li> </ul> |
| Term                                                      | <ul style="list-style-type: none"> <li>– Off-site units must remain affordable in perpetuity, unless a shorter term is required by a funding source.</li> </ul>                                                                                                                                                                                                                             | <ul style="list-style-type: none"> <li>– Perpetuity aligns with BMR provisions but provides flexibility depending on requirements of other funding sources (such as tax credits).</li> </ul>                                                                                                                                                                                                |
| Off-site developer partner (affordable housing developer) | <p>If the developer opts to partner with an affordable housing developer, the Compliance Plan must include:</p> <ul style="list-style-type: none"> <li>– Developer’s financial contributions</li> <li>– Terms offered to the partner</li> <li>– Process for partner selection and partnership / agreement structure (Joint Venture Agreement, Partnership Agreement, MOU, etc.).</li> </ul> | <ul style="list-style-type: none"> <li>– Allows City to evaluate adequacy of developer contribution and partnership structure in alignment with approved project requirements.</li> </ul>                                                                                                                                                                                                   |

| Standard                                        | Requirement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Rationale                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| City oversight of developer partnership         | <ul style="list-style-type: none"> <li>– City shall review and approve the financing terms of the partnership structure.</li> <li>– If developer elects to select a partner through a Request for Proposals process, City shall review and approve the RFP.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>– Ensures alignment with approved project requirements.</li> </ul>                                                                                                                                                                                                           |
| Feasibility and Financing Plan                  | <p>Applicant must submit a feasibility and financing analysis with their Compliance Plan that:</p> <ul style="list-style-type: none"> <li>– Demonstrates the value of the alternative compliance aligns with the in-lieu fee equivalency.</li> <li>– Identifies any developer contribution to make project feasible (such as full contribution of land, equity, securing other funding/financing).</li> <li>– Provides a comprehensive pro forma showing secured or viable financing.</li> <li>– Confirms no City financial contributions are required.</li> <li>– The City may, at the applicant's expense, retain a consultant to review the reasonableness plan.</li> </ul> | <ul style="list-style-type: none"> <li>– Review project feasibility.</li> <li>– 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.</li> </ul> |
| Relocation Assistance and First Right to Return | <ul style="list-style-type: none"> <li>– Developers must provide relocation assistance and first right to return consistent with the City's Tenant Relocation Assistance Ordinance (TRAO).</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <ul style="list-style-type: none"> <li>– Mitigates existing tenants from hardship during rehabilitation, prevents displacement and aligns with the City's fair housing and tenant-protection goals.</li> </ul>                                                                                                      |
| Timing                                          | <ul style="list-style-type: none"> <li>– Complete all required rehabilitation work and obtain Certificates of Occupancy no later than the market-rate project's Certificate of Occupancy.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <ul style="list-style-type: none"> <li>– Ensures timely delivery of affordable units concurrent with market-rate development.</li> </ul>                                                                                                                                                                            |

## **Recommended Amendment: Housing Element Criterion 4 – In Lieu Fee Adjustments**

### **Annual Escalator**

Council directed staff to review whether there is a different escalator that should be used to annually adjust the in-lieu fee. Currently, the fee is adjusted using the Consumer Price Index (CPI), which tracks the change in the price of a basket of consumer goods and is unrelated to the cost of construction. Staff and the City’s consultant reviewed other escalators/indices and identified the California Construction Cost Index (CCCI) as the most accurate 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.<sup>6</sup> Therefore, **staff recommends utilizing the CCCI escalator moving forward.**

### **In-Lieu Fee Update**

As part of the recommendation to use the in-lieu fee as the methodology by which to calculate the value of alternative compliance proposals, staff and City consultant reviewed the in-lieu fee amount itself. The current in-lieu fee schedule using the “equivalency methodology” previously discussed was based on economic and financial conditions in 2019 when the BMR Program was last updated. Since that time, the in-lieu fee amounts have changed, as shown in Table 6 below, 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. Staff recommends including the updated fee amounts in the next Master Fee Schedule update.

**Table 6: Current and Recommended BMR In-Lieu Fees for  
Calculating Value of Alternative Means of Compliance**

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

<sup>6</sup> [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.

**Recommended Amendment: Housing Element Criterion 5 – Remaining Clean-up items**

As noted in the Background section, the City completed the first phase of the two-phase BMR Ordinance amendment process by implementing three clean-up items in February 2025. Two of the remaining three clean-up items will be implemented in this second phase, as follows:

- Clarify that ownership projects can have a weighted average equal to or less than 100% AMI.
- Update the administering department from Community Development to Housing.

However, staff recommends that the remaining clean-up item – clarifying that the City is not the administrator of the HOA reserve – be removed from the amendment process. As discussed below, staff recommends that the HOA reserve requirement itself be removed from the BMR Program. If Council agrees with this recommendation, there will be no HOA administrator and therefore, no need to clarify the City's role.

**New Recommended Amendments**

Since the December 2023 Study Session, staff have identified the following additional amendments for Council consideration:

- Remove the HOA Reserve Fund from the BMR Program.
- Update the BMR Guidelines administratively.
- Establish a rationale for small projects and incorporate a graduated fee reduction for such projects.
- Evaluate moving the BMR Ordinance from Chapter 36 (Zoning Code) to Chapter 46 (Housing-related Ordinances).

**Remove the HOA Reserve Fund**

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 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.<sup>7</sup> 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.

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<sup>7</sup> 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.

In 2023, the Governor signed Assembly Bill (AB) 572, which went into effect on January 1, 2024. The intent of AB 572 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.

**Therefore, staff recommends removing the HOA Reserve Fund requirement from the BMR Program. This also means that the sixth and final clean-up item discussed above – clarifying that the City is not the administrator of the HOA reserve – is no longer needed.**

#### Administrative Updates to the BMR Program Guidelines

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)). By extension, this requirement would extend to amendments to Guidelines.

**Staff recommends removing this resolution requirement and allowing periodic Guidelines updates to occur administratively** as long as the updates remain consistent with the intent and purpose of the BMR Ordinance. An administrative process would enable staff to more efficiently incorporate operational adjustments, clean-ups, and clarifications, including those necessitated by changes in State or federal 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.

#### Establish a rationale for small projects & incorporate a graduated fee reduction for such projects.

- **Rationale for small projects**

In December 2023, the City Council establish a rationale for BMR Program applicability to various sized projects, specifically small projects with one (1) to six (6) units, which are subject to payment of fractional in-lieu fees.

As mentioned, AB 1505 was signed into law in 2017. The bill declared that inclusionary housing programs, i.e., such as local BMR Programs, have been a historically effective means

of producing affordable housing and reaffirmed the authority of local jurisdictions to implement BMR programs, particularly related to rental projects.

The City's BMR Program requires all residential developments with one or more units to contribute towards the creation of affordable housing. While the objective standard of the City's program is the production of BMR on-site units, the BMR Program provides alternative means of compliance, including fractional in-lieu fees for small projects with one to six units.

The rationale for small projects to be covered by the BMR Program is the same rationale as for larger projects: that a residential development of any size can contribute towards increasing the supply of affordable housing. Including projects of any size is the most comprehensive way of meeting this intent. Staff recommends continuing with the BMR Program as stipulated in the Housing Element, including the applicability of the BMR program for small projects, with the following points:

- Because the focus of recent State laws and the City's development plans, such as various Precise Plans, has been to facilitate multi-family construction, single-family homes inherently comprise a small percentage of the total volume of development activity in the City. Since 2022, there have been 32 single family homes constructed that are part of small development projects, which were not deterred by the fractional in-lieu fees.
- The BMR Program implements a fractional in-lieu fee methodology for small projects, which is at a significant discount to the standard in-lieu fees (85% discount). This is in recognition that small projects lack economies of scale that larger projects may have and can be more challenging to absorb fees. This discount is also appropriate because small projects are not big enough to generate even a single BMR unit. Therefore, a discounted fee for small projects is not in conflict with the BMR Program's objective standard to create on-site BMR units.
- The 32 single family homes have generated approximately \$800,000 in fee revenue for the City. While this is not an extraordinary amount, it still represents a meaningful resource to invest in affordable housing programs, especially given limited external funding and the City's own funding gap. This funding amount is similar to recent grant programs that the City has applied for and received to support homeownership and other projects.

Therefore, staff believes that applying the BMR Program to small projects using the fractional in-lieu fee methodology achieves an appropriate balance of project feasibility while generating meaningful resources to facilitate affordable housing. This is especially so given Council's direction to remove the standard in-lieu fees as an option for projects with seven or more units.

- **Incorporate a Graduated Fee Reduction for Small Projects**

Notwithstanding the above discussion, **staff recommends incorporating an additional fee reduction for small projects between one and six units using a graduated fee reduction methodology.**

The purposes of the graduated fee reduction are to:

- 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.

Table 6 below provides an illustrative example of the graduated fee reduction, comparing the total and per unit fractional fee amount for projects from one to six units with and without the graduated reduction. The dashed column on the right-hand side of the table demonstrates the per-unit savings to a developer, incentivizing more units on an infill/R1 site.

**Table 7: 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.

**Staff also recommends 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.** For example, if a site allows 7 units to be built, which would require one on-site BMR unit (based on the 15% requirement), the graduated fee reduction would not be allowed if the developer opted to build only 6 units, thereby avoiding producing a BMR unit or paying any fractional fee.

### Evaluate moving the BMR Ordinance from Chapter 36 to Chapter 46

The City is reviewing the City Code as part of the Fiscal Year 2025-27 Council Strategic Workplan to clean up the City Code. As part of this process, Chapter 46 is expected to consolidate various housing-related ordinances. Currently, Chapter 46 only contains the Mobile Home Rent Stabilization Ordinance (MHRSO). In December 2025, Council will be considering approving the introduction of amendments to the Tenant Relocation Assistance Ordinance (TRAO), including moving the TRAO from Chapter 36 (Zoning Code) to Chapter 46.

Similarly, staff recommends evaluating moving the BMR Ordinance from Chapter 36 to Chapter 46 to consolidate it with the TRAO and MHRSO 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.

Staff intends to evaluate whether moving the BMR Ordinance from the Zoning Code will have any impact on the City's authority to implement the Ordinance. **If staff finds that moving the BMR Ordinance from Chapter 36 to Chapter 46 will still enable the City to implement the Ordinance, staff recommends incorporating this change when the Ordinance amendments are brought forward for Council consideration, currently anticipated for end of Q1 2026/early Q2 2026.**

### FISCAL IMPACT

There is no fiscal impact with providing policy direction to staff for BMR Program updates. Modifications to the alternative compliance, such as removing fees, may result in less BMR in-lieu fee revenue. Although this could make it more challenging to provide subsidies to fully affordable housing developments, the intent of the program is that affordable units would be delivered through the BMR program itself.

### 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 City's BMR Program as modified in 2019 has been effective in increasing the supply and diversity of affordable housing in Mountain View. The recommended amendments discussed in this memo will enhance the efficacy of the BMR Program by incorporating new requirements for physical accessibility, alternative means of compliance, remaining clean-up items, and new recommended amendments that were identified after the December 2023 Study Session. At the same time, the recommended amendments will enhance development feasibility by increasing the clarity of the BMR Program and reducing costs in key program areas.

#### **ALTERNATIVES**

1. Modify or do not approve the recommended amendments.
2. Provide other direction.

#### **NEXT STEPS**

Staff will incorporate the Council's feedback and bring BMR Ordinance amendments forward as follows:

**Table 8: BMR Ordinance Amendment Process**

| <b>Council/Commission</b>         | <b>Agenda Section</b> | <b>Topic</b>                           | <b>Anticipated date</b> |
|-----------------------------------|-----------------------|----------------------------------------|-------------------------|
| Environmental Planning Commission | Public Hearing        | Draft Ordinance                        | Early-Mid Q1 2026       |
| City Council                      | Public Hearing        | Ordinance introduction (first reading) | Late Q1 2026            |
| City Council                      | Consent               | Ordinance adoption (second reading)    | Early Q2 2026           |

The next BMR Program review will occur in 2028 to meet the second review deadline stipulated in Housing Element Program 1.9.

**PUBLIC NOTICING**

Agenda posting, and email notification to City Housing Element interest list and developer distribution list.

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