

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW AMENDING CHAPTER 36, ARTICLE XIV, DIVISION 2 (RESIDENTIAL DEVELOPMENT: BELOW-MARKET-RATE HOUSING PROGRAM) OF THE MOUNTAIN VIEW CITY CODE TO MODIFY THE BELOW-MARKET-RATE PROGRAM AND ADD SECTION 36.40.32 GOVERNING GRADUATED FEE REDUCTION FOR SMALL PROJECTS, AND FINDING THAT THESE CODE AMENDMENTS ARE NOT SUBJECT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1. Findings.** The City Council hereby makes the findings pursuant to Section 36.52.70 of the Mountain View City Code.

a. **The proposed amendment is consistent with the General Plan.** The proposed amendments, which will result in the enactment of a more comprehensive Below-Market-Rate Housing Program, are consistent with the General Plan vision of supporting Mountain View’s diversity through innovative housing approaches for lower-income populations.

b. **The proposed amendments would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.** The proposed amendments are not detrimental to the public interest, health, safety, convenience, or welfare of the City because these amendments result in the enactment of a more comprehensive Below-Market-Rate Housing Program to encourage residential developments serving a broad range of diverse households and incomes.

c. **The proposed amendments are in compliance with the provisions of the California Environmental Quality Act (CEQA).** Pursuant to California Code of Regulations section 15060(c)(2), these code amendments are not subject to the California Environmental Quality Act (“CEQA”) because they will not result in a direct or a reasonably foreseeable indirect physical change in the environment as the proposed amendments do not approve any particular project and do not change land use designations.

**SECTION 2. Code Amendments.** Chapter 36, Article XIV, Division 2 of the Mountain View City Code is amended to add, delete, or modify its title, sections, subsections, and provisions as set forth below. Section titles are shown in **bold** font, additions are shown in red underline font and deletions are shown by ~~strikethrough~~ font. Provisions that are not shown in underline or strikethrough font are not changed.

## ARTICLE XIV AFFORDABLE HOUSING PROGRAM

### DIVISION 2. RESIDENTIAL DEVELOPMENT: BELOW-MARKET-RATE HOUSING PROGRAM

#### SEC. 36.40.10. General requirements.

The words and terms used in this chapter shall have the meaning indicated as follows, unless the context clearly indicates otherwise:

- a. **Objective standard.** The basic requirement of the BMR program is the provision of BMR units on-site and integrated with market-rate units for both rental and ownership projects.
- b. **Percentage requirement.** All residential development as defined in Sec. 36.40.05 are subject to the BMR program and shall provide at least fifteen ~~(15)~~ percent (15%) of the total number of dwelling units as affordable units.
  1. **Ownership units.** All nonexempt ownership residential developments other than rowhouses and townhouses (as defined in Article IV of Chapter 36 of the city code) shall include at least fifteen ~~(15)~~ percent (15%) of the total number of ownership dwelling units within the development as units affordable to Moderate-income households. The affordable ownership units must be provided at a minimum of two (2) income levels, with a resulting income level equal to or less than a weighted average of one hundred ~~(100)~~ percent (100%) of the AMI when considering all of the affordable ownership units cumulatively. Rowhouses and townhouses in residential ownership developments shall be subject to a twenty-five ~~(25)~~ percent (25%) on-site BMR requirement, with fifteen ~~(15)~~ percent (15%) of the units as affordable to an income level equal to or less than ~~at~~ a one hundred ~~(100)~~ percent (100%) AMI weighted average with a range of Low-income household and Moderate-income household units; and a ten ~~(10)~~ percent (10%) ~~on-site BMR requirement~~ of the units at a one hundred thirty-five ~~(135)~~ percent (135%) AMI weighted average with a range of units above one hundred twenty ~~(120)~~ percent (120%) and up to one hundred fifty ~~(150)~~ percent (150%) AMI. ~~The city does not allow BMR ownership units set at an income level lower than eighty (80) percent AMI to count toward a for-sale project's BMR requirements, unless a reserve is established that can be utilized by lower income owners to fully pay for future expenses related to increases in homeowners association (HOA) fees or other assessments, such that the overall housing cost of homeownership is maintained at an affordable level.~~
  2. **Rental units.** All rental residential developments shall include at least fifteen ~~(15)~~ percent (15%) of the total number of rental dwelling units within the development as units affordable to Low-income households and Moderate-income households. The affordable rental units must be provided at a minimum of two (2) income levels, with a resulting income level no greater than a weighted average of sixty-five ~~(65)~~ percent (65%) of the AMI when considering all of the BMR rental units cumulatively, except as set forth in this article.

- c. **Size of project.** The BMR requirement shall apply to all new residential developments and applicable condominium conversions.
- d. **In-lieu fees for fractions of units.** Residential projects with less than seven (7) units shall have the option of paying a fee in lieu of the fractional BMR unit. A residential project with seven (7) units or more may pay an in-lieu fee for fractional units when the BMR obligation results in a fractional BMR unit that is less than 0.5 (i.e., less than half a unit); ~~and a~~ **A** fractional unit equal to 0.5 or greater shall be rounded up and the project must provide one (1) BMR unit on-site to satisfy the fractional obligation. Payment of an in-lieu fee for qualifying fractional units shall be made in full prior to issuance of the project's first building permit, and shall be based on the fee level equivalent to providing the BMR units on-site and as published in the master fee schedule. The Housing Director ~~community development director~~ or designee shall be authorized to adjust the rental and ownership fees annually based on the California Construction Cost Index (CCCI), as recorded by Engineering News Record and reported regularly by the California Department of General Services. ~~Consumer Price Index (CPI), All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics.~~
- e. **Concurrent development of BMR on-site units.** All BMR on-site units in a residential development and phases of a development shall be constructed concurrently with or prior to the construction of market-rate units.
- f. **Location and design of BMR on-site units.** All BMR units shall be reasonably dispersed throughout the project and consistent with federal and state fair housing laws, have a distribution of units by number of bedrooms proportionate to the market-rate units, and be of comparable size to the market-rate units based on net habitable square footage of the units, except that affordable units for seniors shall comply with applicable requirements for senior housing. For purposes of this subdivision (f), "net habitable square footage" shall mean the floor area enclosed within the walls of structure for sleeping, eating or cooking, and living, including the floor area for bathrooms, toilet compartments, closets, halls, and interior storage areas. Net habitable square footage shall be measured from the outside perimeter of the unit's walls expressed in square feet and fractions thereof. Garages, exterior storage, common circulation areas shared between more than one unit, patios and other outdoor spaces (whether or not such spaces are enclosed) shall not be part of net habitable square footage. The actual location of a BMR rental unit within a complex shall be permanently assigned to a particular dwelling unit.

The exterior design of the BMR units shall be consistent with the market-rate units in the project and be comparable in terms of interior design, appearance, materials, and quality of finish. However, the BMR units may differ from market-rate units in the project by using lower-cost alternatives to certain amenities considered to be luxury items. BMR units shall have the same access to project amenities and recreational facilities as market-rate units.

- g. **Qualifying households.** All BMR rental units shall be rented only to qualified Low-income households or Moderate-income households, and all BMR ownership units shall be sold only to qualified Moderate-income households, except households for rowhouses/townhouses shall qualify based on the BMR requirement as referenced in this Sec. 36.40.10. Rents, sales prices, and eligible household sizes of BMR units shall comply with the requirements pursuant to the BMR guidelines.

Preference is given to eligible applicants for a BMR unit if they live or work in the City of Mountain View, ~~unless otherwise prohibited~~ Preference will not be allowed if not permitted by state or federal law or other fair housing restrictions.

- h. **Term.** BMR units subject to this division shall be maintained as affordable housing in perpetuity, unless (i) the BMR units are delivered through an alternative means of compliance and are located in a separate building which shall have one hundred percent (100%) affordable housing, and a different period of time is required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, provided that such term shall be no less than fifty five (55) years, or (ii) otherwise provided by state law.
- i. **Density bonus and replacement units.** Compliance with the provisions of this article may be applied towards a request for a density bonus and/or towards any obligation under state law to replace housing units in connection with a project, provided that the affordable units meet the stricter of the BMR program requirements and the density bonus law and/or replacement housing requirements, as applicable.
- j. **Administrative guidelines.** The Housing Director may issue guidelines consistent with the provisions of this Article for the purpose of carrying out and enforcing the provisions of this Article. ~~The city shall adopt, by resolution, BMR administrative guidelines (BMR guidelines) necessary for the implementation of the provisions of this article.~~
- k. **Administration.** The Housing Department or its designee shall administer the BMR program ~~shall be administered by the community development department or its designee who~~ and may issue written procedures to implement the BMR program and guidelines.
- l. **Accessible or Adaptable BMR Units.** If a development includes both (i) at least one accessible or adaptable unit, and (ii) at least one BMR unit, then at least fifteen percent (15%) of the BMR units or one BMR unit, whichever is greater, must be accessible or adaptable. If the development's obligation to provide at least fifteen percent (15%) of the BMR units as accessible or adaptable results in a fractional obligation that is less than 0.5 (i.e., less than half a unit), such fractional obligation shall be rounded down after the first accessible or adaptable BMR unit. An obligation to provide a fractional accessible or adaptable BMR unit equal to 0.5 or greater shall be rounded up and the project must provide one (1) accessible or adaptable BMR unit to satisfy the fractional obligation.  
For purposes of this subdivision (l), "accessible" and "adaptable" shall mean standards for

features or fixtures, designs, or other improvements, which are equal to or exceed the minimum requirements of Chapter 11A of the California Building Code or any successor legislation.

**SEC. 36.40.15. Determination of rents for BMR rental units.**

The monthly rental rate for each BMR unit shall be based on the designated income level for the BMR unit and household size as established by the City of Mountain View BMR program ~~administrative~~ guidelines. The units shall be designated for Low-income households and Moderate-income households, with a cumulative weighted average of no more than sixty-five ~~(65)~~ percent (65%) AMI, and rent shall be based on no more than thirty ~~(30)~~ percent (30%) of the designated income level for the BMR unit ~~qualifying tenant's gross household monthly income,~~ according to the procedures set forth in the BMR ~~program~~ guidelines. The rent range for Low-income households and Moderate-income households may be adjusted annually to reflect adjustments in the gross household income levels for Santa Clara County published periodically by the California Department of Housing and Community Development.

**Sec. 36.40.16. Rent Increases for BMR Units.**

The following provisions shall apply to rent increases on BMR units.

- a. The rental rate for an occupied BMR unit shall not be increased more than three percent (3%) within a twelve-month period. This provision shall not prohibit a landlord from increasing the rental rate on a vacant BMR unit more than 3% to align the rental rate with current applicable State Income Limits set by the California Department of Housing and Community Development.
- b. The rental rate for an occupied BMR unit shall not be increased more than one time in a twelve-month period.
- c. A tenant shall be provided written notice of any increase in the rental rate for their unit no less than thirty (30) days prior to the effective date of the rent increase. The notice shall at a minimum include the new rental rate and the date the new rate will become effective. Written notice of a rent increase shall be hand-delivered to the tenant or served by U.S. mail in accordance with Section 1013 of the California Code of Civil Procedure. A tenant shall not be liable for any rent increase imposed without notice delivered in accordance with this subsection.
- d. A landlord who demands, accepts, receives, or retains any payment of rent in violation of this section shall be liable in a civil action to the tenant from whom those payments are demanded, accepted, received, or retained for all of the following:
  1. Injunctive relief.

2. Damages in the amount of the rent demanded, accepted, received, or retained in violation of this section.
3. In the court's discretion, reasonable attorney's fees and costs.

**SEC. 36.40.20. Determination of sale prices for BMR ownership units.**

A project's BMR ownership units shall be sold at prices affordable to Moderate-income households with a cumulative weighted average of no more than one hundred ~~(100)~~ percent (100%) AMI, except sales prices for rowhouses/townhouses shall be based on the BMR requirements for such developments as referenced in this Sec. 36.40.20, and ownership sales prices shall be based on the selected income level for each unit and the presumed household size that corresponds with the various unit sizes as set forth in the BMR guidelines. The eligible household income range may be adjusted annually to reflect adjustments in the median household income level for Santa Clara County published periodically by the California Department of Housing and Community Development. The sales price for each BMR unit shall result in a total monthly payment that shall not exceed thirty ~~(30)~~ percent (30%) of the AMI level designated ~~selected household income level~~ for that unit adjusted by unit size and presumed household size, and includes mortgage, taxes, utilities, HOA dues, insurance and private mortgage insurance.

~~For units sold at or less than eighty (80) percent AMI, the developer shall set aside a reserve and describe the reserve in the CC&Rs to cover future special assessments and increases in HOA dues for those households, and the total housing cost shall not exceed thirty (30) percent of the household's selected income level for the unit over the life of the mortgage. The community development director or designee may establish standards for calculating the amount of the reserve.~~

**SEC. 36.40.25. Resale controls on ownership units.**

All BMR units shall be subject to deed restrictions, covenants, resale restrictions, and other applicable conditions and documentation to ensure compliance with the BMR program, and which includes an option that entitles the city or its designee the first right to purchase a BMR ownership unit at the lower of the following purchase prices:

- a. Market value;
- b. The purchase price paid by the seller, plus one-third of the increase (during the period of seller's ownership) in a CPI, All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics; or
- c. An amount equal to the price affordable to household earning the income level specific to

the BMR unit.

An exception to the city-imposed restriction that the BMR unit be sold to a city-approved BMR household may be granted if:

1. The applicant demonstrates the inability to obtain a qualified buyer within a one hundred eighty (180) day period; and
2. The city decides not to exercise its option to purchase the BMR unit. The seller will be entitled to the lowest purchase price listed above. The balance of the proceeds shall be paid to the City of Mountain View to be deposited in the city's housing fund. The deed restrictions shall prohibit sales or transfers of the property except with the written consent of the city and at a price listed above.

Owners of BMR ownership units shall provide the city/designee a notification of intent to sell prior to listing the unit. If an owner intends to refinance, change title, or transfer ownership of the BMR ownership unit, the owner shall notify and receive approval from the city/designee prior to initiating a refinance, title change, or transfer of ownership. The city is entitled to pursue all available remedies against an owner if an owner fails to notify and receive approval from the city/designee, including the city's exercise of its option to purchase the BMR ownership unit or a city action to foreclose on the BMR ownership unit under the city's deed of trust.

The BMR ownership deed restrictions and conditions shall contain such other provisions as are considered necessary by the city to implement the BMR program and the city may require that additional notices or other document(s) be recorded. A reference to the deed restrictions and conditions shall be included in all deeds or conveyances of BMR units.

### **SEC 36.40.30. Alternative Compliance Measures**~~mitigations.~~

The basic objective standard of the program is the creation of residential developments with affordable housing units integrated on-site with market-rate residential units developments. As an alternative to building the affordable housing units on-site, developers of market-rate residential projects, regardless of whether such projects provide rental units or ownership units, may submit a request to meet their BMR program obligations through ~~other means, such as the~~ dedication of land, off-site development of BMR units and/or the acquisition and preservation of existing housing units to be converted into deed-restricted BMR units~~the provision of other resources, payment of an in-lieu fee, or other alternatives.~~

The applicant has the burden of demonstrating that the request for an alternative ~~mitigation~~ compliance measure meets the findings criteria set forth below. The alternative compliance measure shall be approved if each of the criteria herein are satisfied.~~requirements; however, meeting the findings requirements does not constitute automatic approval of the alternative mitigation request. Such requests may only be granted by the city council, if the city council determines that such alternative will further affordable housing opportunities in the city to a~~

~~greater extent than providing units on-site based on the standards in the administrative guidelines and/or other procedures promulgated and that the alternative mitigation is preferred to the on-site requirement.~~

a. **General Requirements.**

1. **Compliance Plan.** A request for alternative compliance measure must include a BMR Compliance Plan (“Compliance Plan”). The Compliance Plan shall include: (i) a description of the proposed alternative means of compliance, with details including but not limited to the number, size, density, and affordability of BMR Units, as applicable; (ii) pro forma financial statements; (iii) a financing plan; (iv) a feasibility analysis that demonstrates the applicant will successfully deliver the proposed BMR alternative, including through financial contributions as applicable; (v) an equivalency analysis that demonstrates that the value of the proposed alternative is no less than the value of providing on-site BMR units; (vi) supporting documentation as required by the BMR guidelines. Additionally, if the proposed alternative involves partnering with another entity, the Compliance Plan shall include information that demonstrates the partnering entity meets the partner requirements listed in Table 36.40.30-2 or Table 36.40.30-3, as applicable. A Compliance Plan with the information required herein shall be submitted in order for informal planning review to be deemed complete.

2. **Findings.** A request for alternative compliance may only be granted if the Housing Director makes each of the following findings:

(a) **Equivalency.** The value of the proposed alternative compliance measure is no less than the cost of providing BMR units on-site, based on the fee level equivalent to providing the BMR units on-site and as published in the master fee schedule.

(b) **Financing of the Alternative Compliance Measure.** The applicant has demonstrated that it will successfully deliver the proposed alternative compliance measure. Applicant’s contribution towards financing the proposed alternative shall include, as applicable, the full value of the land in perpetuity, as well as additional funding or other resources as needed. If the proposed alternative involves a partnership with another entity, the applicant has demonstrated that (i) the partnering entity will not be required to provide any monetary compensation to the applicant; (ii) the partnering entity will only be required to fund costs directly related to providing the BMR units and a proportional share of infrastructure serving the BMR units; and (iii) it has not shifted any of its own financial responsibility or development costs related solely to the market-rate units onto the partnering entity. The City may, at the applicant’s expense, retain a consultant to review the reasonableness of the Compliance Plan’s feasibility analysis.

b. **Land Dedication.** In addition to the General Requirements in Section 36.40.30(a), a request for alternative compliance in the form of a land dedication to the City shall not be approved unless all the following requirements specified in Table 36.40.30-1 are met:

Table 36.40.30-1: Criteria for Land Dedication Proposals

<u>Standard</u>	<u>Requirement</u>
<u>Parcel Size and Capacity</u>	<u>The site being dedicated must be a minimum parcel size of 0.75 acres, and be of a suitable size to accommodate the number and distribution of BMR units that would have been required for the site with market-rate units.</u>
<u>Location</u>	<p><u>At least one of the following must be true for the site being dedicated:</u></p> <ul style="list-style-type: none"> <li>• <u>Site is identified as a Housing Element Opportunity Site.</u></li> <li>• <u>Site is within 0.5 mile of the underlying project.</u></li> <li>• <u>Site is located south of El Camino Real.</u></li> <li>• <u>Site is included in the El Camino Precise Plan.</u></li> <li>• <u>Site is located in an area designated by the California Department of Housing and Community Development as a “Highest Resource Area.”</u></li> </ul>
<u>Environmental Conditions</u>	<u>Applicant must submit environmental conditions reports, including but not limited to Phase I and Phase II environmental site assessments as applicable, and must complete any necessary remediation to make the site suitable for residential development prior to conveyance of the land.</u>
<u>Special Conditions</u>	<u>Applicant shall submit a feasibility analysis with their Compliance Plan that includes a City-led appraisal of the land to be dedicated.</u>
<u>Site Infrastructure</u>	<u>Applicant shall provide or fund all infrastructure necessary to serve the site—including utilities, streets, sidewalks, and lighting up to the border of the dedicated parcel—and be consistent with any applicable Precise Plan standards.</u>
<u>Cost Recovery</u>	<u>Applicant shall pay a fee as set forth in the City’s master fee schedule based on the City’s costs for construction of BMR units on the dedicated site as would have been required for the site with market-rate units.</u>
<u>Timing of Land Dedication</u>	<u>Dedicated site and any required financial contribution, if applicable, must be transferred to the City prior to the issuance of the first building permit for the underlying project.</u>

- c. **Off-site Development.** In addition to the General Requirements in Section 36.40.30(a), a request for alternative compliance in the form of off-site development of BMR units shall not be approved unless all the following requirements specified in Table 36.40.30-2 are met:

Table 36.40.30-2: Criteria for Off-Site Development Proposals

<u>Standard</u>	<u>Requirement</u>
<u>Location</u>	<p><u>At least one of the following must be true for the site of the off-site BMR units:</u></p> <ul style="list-style-type: none"> <li>• <u>Site is identified as a Housing Element Opportunity Site.</u></li> <li>• <u>Site is adjacent to underlying project (same or separate parcel are both permissible).</u></li> <li>• <u>Site is within 0.5 mile of the underlying project.</u></li> <li>• <u>Site is located south of El Camino Real.</u></li> <li>• <u>Site is included in the El Camino Precise Plan.</u></li> <li>• <u>Site is located in an area designated by the California Department of Housing and Community Development as a “Highest Resource Area.”</u></li> </ul>
<u>Access to Amenities</u>	<p><u>If any portion of any of the off-site BMR units is located within 750 feet of the underlying project parcel boundary, residents of all off-site BMR units must be granted access to shared amenities located on the underlying project parcel.</u></p>
<u>Unit Requirements</u>	<p><u>The off-site BMR units shall meet the same requirements for percentage requirement, design of BMR units, qualifying households, term, and accessible or adaptable units as described in Section 36.40.10.</u></p> <p><u>The off-site BMR units shall have proportionally the same mix of bedroom counts (studios, one bedroom units, two bedroom units, etc.) as the market-rate units, except the BMR units shall be permitted to include more bedrooms than the market-rate units.</u></p>
<u>Special Conditions</u>	<p><u>Applicant shall submit a financing plan that confirms no financial contributions will be required from the City.</u></p>
<u>Off-Site Partner</u>	<p><u>If the applicant opts to partner with another entity, the Compliance Plan must include:</u></p> <ul style="list-style-type: none"> <li>• <u>The applicant’s financial contributions.</u></li> <li>• <u>The terms offered to the partner.</u></li> <li>• <u>The process for partner selection.</u></li> <li>• <u>The structure of the agreement that forms the relationship between applicant and the partnering entity.</u></li> </ul>

<u>City Oversight of Partnership</u>	<u>If applicant elects to select a partner through a Request for Proposals (RFP) process, the RFP shall comply with Section 36.40.30(a)(2)(b) and the City may review the RFP to ensure such compliance.</u>
<u>Partner requirements</u>	<p><u>If the applicant elects to partner with an entity to undertake the off-site development, that partner shall meet all of the following requirements:</u></p> <ul style="list-style-type: none"> <li>• <u>The partner shall have verifiable experience developing at least three affordable housing projects within the last ten years that are similar in size, scale, tenure, type, target population, and overall physical and financial complexity to the proposed project.</u></li> <li>• <u>In the past 10 years, the partner shall not have been subject to any adverse judgment or enforcement action by a public entity in connection with development activities, housing or public contracting.</u></li> <li>• <u>The partner must not have filed for bankruptcy within the past 10 years.</u></li> <li>• <u>In the past 10 years, that partner must not have been involuntarily removed from an ownership or controlling interest in any publicly-funded development project.</u></li> <li>• <u>In the past 10 years, the partner shall not have been debarred or considered for debarment, suspended, declared ineligible, or excluded by any local, state or federal department or agency from participation in government funded programs or contracts.</u></li> </ul>
<u>Timing</u>	<p><u>The off-site BMR units shall be constructed and receive the Certificate of Occupancy for all units no later than issuance of the first Certificate of Occupancy for any use in the underlying project, unless an alternative timeframe is approved by the final decision-making body to ensure that the BMR units are constructed prior to the final Certificate of Occupancy for the market-rate units.</u></p> <p><u>If the applicant fails to obtain a Certificate of Occupancy for the off-site BMR units by the deadline herein, the underlying project shall be required to comply with the general requirements in Section 36.40.10.</u></p>

d. Acquisition and Preservation of Existing Housing Units. In addition to the General Requirements in Section 36.40.30(a), a request for alternative compliance in the form of

acquisition and preservation of existing housing units to be converted into deed-restricted BMR units shall not be approved unless all of the following requirements specified in Table 36.40.30-3 are met:

Table 36.40.30-3: Criteria for Acquisition/Preservation Proposals

<u>Standard</u>	<u>Requirement</u>
<u>Eligibility</u>	<p><u>The units to be acquired must be existing residential units located on a different site than the underlying project and not be subject to any existing restrictions requiring affordability to moderate- or low-income households.</u></p> <p><u>The acquired units shall be converted into deed-restricted rental or ownership BMR units with the tenure type consistent with the underlying market-rate project.</u></p>
<u>Location</u>	<p><u>At least one of the following must be true for the units to be acquired:</u></p> <ul style="list-style-type: none"> <li>• <u>The units are subject to Article XVII of the Mountain View Charter (Community Stabilization and Fair Rent Act).</u></li> <li>• <u>Site is identified as a Housing Element Opportunity Site</u></li> <li>• <u>The units are within 0.5 mile of the underlying project.</u></li> <li>• <u>The units are located south of El Camino Real.</u></li> <li>• <u>The units are located on a site that is included in the El Camino Precise Plan.</u></li> <li>• <u>The units are located in an area designated by the California Department of Housing and Community Development as a “Highest Resource Area.”</u></li> </ul>

<u>Rehabilitation and Physical Needs Assessment and Standards</u>	<p><u>The Compliance Plan must identify:</u></p> <ul style="list-style-type: none"> <li>• <u>Building and unit-level physical needs assessments of existing conditions.</u></li> <li>• <u>Required rehabilitation, repairs, or replacements, including accessibility requirements, based on applicable State and local requirements.</u></li> <li>• <u>Improvements that make the acquired units comparable in terms of interior design, appearance, materials, and quality of finish as the market-rate units.</u></li> <li>• <u>Estimated rehabilitation costs.</u></li> </ul> <p><u>Soft-story buildings must be retrofitted for current seismic compliance according to state and local requirements, as applicable, based on the physical needs assessment.</u></p>
<u>Affordability</u>	<p><u>For units to be converted into ownership BMR units, the affordability requirements shall be the same as the affordability requirements described for ownership units in Section 36.40.10(b)(1).</u></p> <p><u>For units to be converted into rental BMR units, the affordability requirements shall be the same as the affordability requirements described for rental units in Section 36.40.10(b)(2).</u></p>
<u>Unit Count/Bedrooms</u>	<p><u>Acquired units must meet or exceed the bedroom count of on-site BMR units that would have otherwise been provided. Studios count as 0.5 bedrooms.</u></p> <p><u>The total number of acquired units cannot exceed 1.5 times the number of BMR units that would have been required on-site.</u></p>
<u>Special Conditions</u>	<p><u>Applicant shall submit a financing plan that confirms no financial contributions will be required from the City.</u></p>
<u>Off-Site Partner</u>	<p><u>If the applicant opts to partner with another entity, the Compliance Plan must include:</u></p> <ul style="list-style-type: none"> <li>• <u>The applicant's financial contributions.</u></li> <li>• <u>The terms offered to the partner.</u></li> <li>• <u>The process for partner selection.</u></li> <li>• <u>The structure of the agreement that forms the relationship between applicant and the partnering entity.</u></li> </ul>

<u>City Oversight of Partnership</u>	<u>If applicant elects to select a partner through a Request for Proposals (RFP) process, the RFP shall comply with Section 36.40.30(a)(2)(b) and the City may review the RFP to ensure such compliance.</u>
<u>Partner requirements</u>	<p><u>If the applicant elects to partner with an entity to undertake the acquisition and preservation of existing housing units, that partner shall meet all of the following requirements:</u></p> <ul style="list-style-type: none"> <li>• <u>The partner shall have verifiable experience developing at least three affordable housing projects within the last ten years that are similar in size, scale, tenure, type, target population, and overall physical and financial complexity to the proposed project.</u></li> <li>• <u>In the past 10 years, the partner shall not have been subject to any adverse judgment or enforcement action by a public entity in connection with development activities, housing or public contracting.</u></li> <li>• <u>The partner must not have filed for bankruptcy within the past 10 years.</u></li> <li>• <u>In the past 10 years, that partner must not have been involuntarily removed from an ownership or controlling interest in any publicly-funded development project.</u></li> <li>• <u>In the past 10 years, the partner shall not have been debarred or considered for debarment, suspended, declared ineligible, or excluded by any local, state or federal department or agency from participation in government funded programs or contracts.</u></li> </ul>
<u>Relocation Assistance</u>	<u>Applicants must provide relocation assistance and first right of return to any existing occupant of the units proposed for rehabilitation, as consistent with the City’s Tenant Relocation Assistance Ordinance (TRAO).</u>
<u>Timing</u>	<u>The units shall be acquired, all necessary rehabilitation work shall be completed, and all acquired and rehabilitated units shall receive a Certificate of Occupancy no later than the issuance of the first Certificate of Occupancy for the market-rate units, unless an alternative timeframe is approved by the final decision-making body to ensure that the units are acquired and preserved as BMR units prior to the final Certificate of Occupancy for the market-rate units.</u>

	<p><u>If the applicant fails to obtain a Certificate of Occupancy for the acquired and preserved BMR units by the deadline herein, the underlying project shall be required to comply with the general requirements in Section 36.40.10.</u></p>
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**SEC. 36.40.32. Graduated Fee Reduction for Small Projects.**

A fee reduction shall be available to projects that: (i) construct between one and six units, and (ii) develop at the maximum permissible residential base density permitted on the project site. The graduated fee reduction schedule shall be provided in the administrative guidelines issued by the Housing Director under Section 36.40.10(j).

The fee reduction shall depend on the maximum permissible residential base density permitted on the project site.

**SEC. 36.40.35. BMR household eligibility requirements.**

- a. The city or its designee shall select potential occupants of BMR units from a list of those persons qualified on the basis of household income, relationship between household size and the size of available units, and further criteria and procedures to be established ~~by the city~~ in the BMR guidelines.
- b. Each purchaser of a BMR unit shall certify, prior to close of escrow, in a form acceptable to the city or its designee, that said unit is being purchased and shall be maintained as the purchaser's primary place of residence.
- c. The household income of each renter of a BMR unit shall be verified annually by the city or its designee to confirm the household's continued income eligibility for the unit as set forth in the BMR guidelines and other procedures that the city may promulgate.

**SEC. 36.40.40. BMR housing fund.**

A housing fund is hereby established for the deposit of all in-lieu fees and other penalties and payments made to the city under the BMR program. The purpose of the fund is to assist in providing housing that is affordable to very low-, low- and moderate-income households and cover administrative costs of the BMR program. The city has sole discretion in determining the income levels(s) that shall be funded with the housing fund, and the housing fund shall not be used to fund units in the above moderate-income category.

**SEC. 36.40.45. Compliance.**

Any individual or household that rents, purchases, or sells a BMR unit in violation of the BMR program requirements or the intent of the BMR program shall be subject to penalties, and shall be required to forfeit all monetary amounts so obtained in excess of the permitted resale price or rental rates. Such amount shall be deposited in the city's BMR housing fund. If the city/designee undertakes any enforcement action to obtain compliance with the requirements of the BMR program, the city/designee shall be entitled to recover its attorney's fees and staff costs for such enforcement effort.

**SEC. 36.40.50. Exemptions and appeals.**

- a. **Exemptions—Historic resources.** Exemptions from, or credit toward, BMR requirements may be granted for certain historic resources pursuant to this section.
- b. **Exemptions—Precise plans.** Exemptions from BMR requirements may be granted in precise plans where the precise plan expressly provides different BMR requirements or exceptions from specific requirements of this Article XIV, Division 2, including the BMR ~~Administrative G~~guidelines.
- c. Appeals of determinations based on the administrative requirements of the BMR program as established in the BMR guidelines must be in the form of a written request by the appellant and be addressed to the ~~community development director~~ **Housing Director**. The ~~community development director~~ **Housing Director** or designee shall make the ruling, and all rulings shall be final. The city may establish cost recovery fees for appeals.

**SEC. 36.40.55. Grandfather provision.**

The provisions of the BMR program shall become effective on August 24, 2019 and apply to all residential developments, except the following residential developments:

- a. Non-gatekeeper projects with formal applications submitted by June 30, 2019 and the submittal of all additional information (if any) by August 24, 2019 as requested in the city's thirty (30) day letter responding to the applicant's formal application submittal.
- b. "Gatekeeper" developments deemed ready by the city, by December 20, 2019, for a public hearing for consideration of project approval and processed in accordance with City Code Secs. 36.50.90, 36.52.20, and 36.52.55.

**SECTION 4. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

**SECTION 5. Publication.** Pursuant to Mountain View City Charter Section 522, at least two (2) days prior to final adoption of this ordinance, the City Clerk shall post the ordinance in three (3) prominent places in the City and publish in the City's official newspaper notice setting forth

the title of the ordinance, the date of its introduction, and a list of the places where copies of the ordinance are posted.

**SECTION 6. Effective Date.** Pursuant to Mountain View City Charter Section 519, this ordinance shall become effective thirty (30) days after the date of its adoption.

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