



REGULAR MEETING AGENDA

Date: 1/10/2018
Time: 6:30 p.m.
Arrillaga Family Recreation Center – Cypress Room
700 Alma St., Menlo Park, CA 94025

A. Call To Order

B. Roll Call

C. Public Comment

Under “Public Comment,” the public may address the Commission on any subject not listed on the agenda. Each speaker may address the Commission once under Public Comment for a limit of three minutes. Please clearly state your name and address or political jurisdiction in which you live. The Commission cannot act on items not listed on the agenda and, therefore, the Commission cannot respond to non-agenda issues brought up under Public Comment other than to provide general information.

D. Regular Business

- D1. Approve minutes for the Housing Commission meeting of December 18, 2017 ([Attachment](#))
- D2. Public Hearing to consider updates to the City’s Below Market Rate and State Density Bonus provisions and corresponding updates to the City’s Below Market Rate Program Guidelines. ([Staff Report #18-001-HC](#))

E. Reports and Announcements

- E1. Subcommittee reports (10 minutes):
 - NOFA
 - Nexus
 - BMR Guidelines
 - Housing Policy Committee
- E2. Commissioner reports
- E3. Staff updates and announcements

F. Adjournment

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At every Regular Meeting of the Commission, in addition to the Public Comment period where the public shall have the right to address the Commission on any matters of public interest not listed on the agenda, members of the public have

the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during the Commission's consideration of the item.

At every Special Meeting of the Commission, members of the public have the right to directly address the Commission on any item listed on the agenda at a time designated by the Chair, either before or during consideration of the item.

Any writing that is distributed to a majority of the Commission by any person in connection with an agenda item is a public record (subject to any exemption under the Public Records Act) and is available for inspection at the City Clerk's Office, 701 Laurel St., Menlo Park, CA 94025 during regular business hours.

Persons with disabilities, who require auxiliary aids or services in attending or participating in Commission meetings, may call the City Clerk's Office at 650-330-6620.



REGULAR MEETING MINUTES - DRAFT

Date: 12/13/2017

Time: 2:00 p.m.

**Arrillaga Family Recreation Center – Cypress Room
700 Alma St., Menlo Park, CA 94025**

A. Chair Tate called the meeting to order at 6:37 p.m.

B. Roll Call

Present: Michele Tate (Chair), Meg McGraw-Scherer (Vice Chair), Sally Cadigan, Nevada Merriman, Camille Kennedy and Karen Grove

Absent: Julianna Dodick

Staff: Meghan Revolinsky, Management Analyst II

C. Public Comment

There was no public comment received.

D. Regular Business

E1. Approve minutes for the Housing Commission meeting of November 08, 2017

ACTION: Motion by Cadigan and second by Grove to approve the November 08, 2017, Housing Commission meeting minutes with changes. Motion passes; 6-0-1 (Dodick absent).

E2. Recommendation of a Below Market Rate Agreement with Hunter-Storm Properties for 1540 El Camino Real

Kaitlin Meador, Associate Planner gave an overview of the project and Deke Hunter, president of Hunter Properties, answered commissioner questions.

ACTION: Motion and second (Tate/Kennedy) to approve the recommendation of a Below Market Rate Housing Agreement Term Sheet with Hunter-Storm Properties for 1540 El Camino Real with consideration to have the city purchase the remaining .6 unit or use the fee to buy down rent costs within the moderate income range. Motion passes; 6-0-1 (Dodick absent).

E. Reports and Announcements

E1. Hello Housing quarterly update

Sarah Shimmin, Senior Program Manager with Hello Housing, provided the update.

E2. Subcommittee reports

NOFA subcommittee, members McGraw-Scherer and Cadigan, gave no report.

Nexus subcommittee, members Merriman and Grove, reported they met with staff and staff will be updating a table with fees from other cities. They plan to bring forward a proposal to the committee early next year.

BMR Guidelines subcommittee, members Kennedy, Dodick and Grove, reported they have continued meeting, have met with key stakeholders and plan to meet with staff for next steps.

Housing Policy subcommittee, members Merriman, Kennedy and Tate, gave no report

E3. Oral report on Waverly Street properties

Staff Revolinsky provided the update.

E4. Update from MidPen Housing on the 1238 Willow Road and 355 Pierce Road community meeting

Nesreen Kavar, Senior Project Manager of MidPen Housing, provided the update.

E5. Commissioner reports

There were no commissioner reports.

E6. Staff updates and announcements

Staff Revolinsky provided an update on the Transportation Master Plan Oversight and Outreach Committee.

F. Adjournment

Chair Tate adjourned the meeting at 9:24 p.m.



STAFF REPORT

Housing Commission

Meeting Date:

1/10/2018

Staff Report Number:

18-001-HC

Regular Business:

Public Hearing to consider updates to the City's Below Market Rate and State Density Bonus provisions and corresponding updates to the City's Below Market Rate Program Guidelines

The staff report was amended January 8, 2018, as noted below.

Recommendation

Staff recommends that the Housing Commission recommend the City Council:

1. Adopt an ordinance updating the City's Below Market Rate and State Density Bonus provisions (Attachment A);
2. Adopt corresponding updates to the City's Below Market Rate Program Guidelines (Attachment B).

Policy Issues

On September 29, 2017, the Governor signed 15 housing related bills as part of a landmark housing package designed to respond to the State's housing crisis. The proposed ordinance implements the most significant bill (AB 1505) adopted to legislatively override a court case preventing cities from legally imposing inclusionary housing requirements on rental units. The proposed ordinance also amends the City's State Density Bonus law to conform to recent State updates.

Background

The City Council established the BMR Housing Program in 1987 to increase the housing supply for people who live and/or work in Menlo Park and have very low, low, or moderate incomes as defined by income limits set by San Mateo County. The primary objective of the program is to create actual housing units rather than generate a capital fund. The City's BMR program contains a range of options depending on the type of development. Typically, condominium/townhome developments comply with the BMR program by constructing and deed restricting affordable units. While the BMR Guidelines encourage commercial developments to also comply by providing on or off-site units, if that is not feasible, commercial projects are able to pay a housing impact fee. From 2011 – 2017, rental housing projects were exempt from the BMR program under a state law case titled *Palmer/Sixth Street Properties LP v. City of Los Angeles* (see discussion below).

Residential Development BMR Requirements

Under the City's BMR Ordinance, for-sale residential developments of five or more units must comply with the City's inclusionary zoning requirements to include a percentage of BMR units along with their market-rate units. The City has the discretion to allow a developer to meet their BMR requirement through accepting an in-lieu fee. In-lieu fees are calculated as 3 percent of the sale price for the number of required BMR units. The BMR on-site requirements are summarized in Table 1.

Table 1: Inclusionary Requirements - Number of BMR Units Required	
Number of units	Inclusionary Unit Requirement
0-4	Exempt
5-9	1 unit
10-19	10%
20 or more	15%

In 2009, the California Court of Appeal held in *Palmer/Sixth Street Properties LP v. City of Los Angeles* that the Costa-Hawkins Rental Housing Act prevented local governments from imposing inclusionary requirements on rental units that did not receive government assistance. Costa-Hawkins is the state's primary rent control law, which generally gives residential landlords the right to establish the initial rents payable by new tenants. Since *Palmer*, many cities and counties have either repealed their inclusionary rental housing requirements or declined to enforce them. Other communities have attempted to get around this decision by enacting "rental housing impact fees," though implementation of these fees require preparation of a detailed nexus study. In 2011, the City Council by resolution formally suspended its inclusionary rental housing requirement to comply with the *Palmer* decision. More recently, Menlo Park commissioned a nexus study to begin the process of collecting a rental housing impact fee.

Commercial Development BMR Requirements

The BMR Housing Program also applies to new commercial developments of 10,000 square feet or more. The current in-lieu fees to mitigate the demand for affordable housing are \$16.15 per square foot of net new gross floor area for most commercial uses and \$8.76 per square foot of net new gross floor area for defined uses that generate fewer employees. Collected in-lieu fees are deposited into the BMR Housing Fund. The fee is adjusted annually on July 1.

Analysis

AB 1505 Updates

Under AB 1505, cities and counties are once again authorized to adopt inclusionary housing ordinances requiring residential rental housing developments to include a specified percentage of affordable units as a condition of development. AB 1505 supersedes the Court's ruling in *Palmer v. City of Los Angeles* (discussed above). The attached ordinance and updates to the BMR program guidelines implement AB 1505 by restoring the City's inclusionary housing policy for rental projects.

Cities and counties that elect to adopt inclusionary rental ordinances pursuant to AB 1505 must provide developers with an alternative means of compliance, such as the payment of in-lieu fees, dedication of land, the construction of affordable units off-site, or the acquisition and rehabilitation of existing units. In compliance with AB 1505, the ordinance allows rental projects to comply with the BMR program through alternative means. One of the issues the Commission should discuss is how to assess the BMR in lieu fee and whether to weight any of the various compliance options. There are several ways of calculating the in lieu fee. Some cities attempt to set the fee at a rate that would allow the City to develop and construct comparable BMR rental units. Presumably constructing standalone rental units would cost significantly more than constructing the units as part of the permitted project. Thus by tying the fee to the City's actual cost to develop the developer is incentivized to provide on-site units. On the other hand, some cities set their housing fees in line with similar fees in nearby communities. Under this approach, the goal is to provide as

much housing as possible, regardless of affordability. Thus lowering fees or at least tying them to other nearby communities will attract more housing development overall. The Commission should weigh in on both perspectives.

In addition, under AB 1505, if an inclusionary rental ordinance that is adopted or amended after September 15, 2017 requires more than 15 percent of the total number of units in the development be affordable to low-income households, the Department of Housing and Community Development (HCD) has the authority to review the ordinance if the jurisdiction has either: (1) failed to meet at least 75 percent of its share of its regional housing need allocation for the above-moderate income category over a five-year period, or (2) failed to submit its annual housing element report for two consecutive years or more. If these circumstances apply, HCD has the authority to require the City to prepare an economic feasibility study to determine whether the ordinance unduly constrains the production of housing. Based on the study, HCD can require that the ordinance require no more than 15 percent low-income units.¹

AB 1505 comes on the heels of a 2015 ruling of the California Supreme Court in *Building Industry Association v. City of San Jose*, which upheld the ability of local governments to adopt inclusionary housing ordinances. Under that ruling, courts will review and uphold inclusionary housing requirements under the most deferential standard, whether the regulation is reasonably related to the public welfare, and will not require the demonstration of a nexus between the development of new market-rate housing and the need for the affordable housing.

The new ordinance also includes a “safety valve” process for waiving or reducing inclusionary requirements, one of the provisions in the San Jose ordinance that the Supreme Court relied on in upholding San Jose’s ordinance.

Density Bonus Updates

The Legislature has also recently updated the State’s Density Bonus law. AB 2556 (effective January 1, 2017) clarifies that density bonus projects must “replace” each rental unit that (a) currently exists or existed in the past five years, and (b) is or was occupied by low income or very low-income households in the past five years, or was subject to a deed restriction or rent control. (§65915(c).) Because the incomes of prior or even current tenants could often not be ascertained, in many cases it could not be determined how many replacement units were needed. This bill was adopted to close this gap. **Namely, if the income category of the household in occupancy is not known, it shall be rebuttably presumed that lower income renter households occupied these units in the same proportion of lower income renter households to all renter households within the jurisdiction, as determined by the most recently available data from the United States Department of Housing and Urban Development’s Comprehensive Housing Affordability Strategy database.**

To better ensure compliance with this State mandated tenant protection, staff recommends the following provision be added to Section 16.97.050 of the City’s existing Density Bonus ordinance:

(d) An applicant shall be ineligible for a density bonus or any other incentives or waivers under this Chapter if the housing development displaces qualifying rental dwelling units, unless the development replaces those units in accordance with State law.

¹ This may be relevant to the bonus density development in the three new zoning districts adopted pursuant to ConnectMenlo that seek to require greater affordability than inclusionary in exchange for the in exchange for bonus density development.

Finally, staff recommends some minor cleanup changes to the City's BMR ordinance to clarify that the additional density bonus permitted under Section 16.96.040 of the Municipal Code may not be combined with the density bonus allowed under State law and the City's local implementing ordinance.

Additional Changes to City's Housing Ordinances

Staff is reviewing the series of recent housing bills and will likely come forward with additional ordinance changes in the upcoming year. **These changes may include minor modifications to the three new zoning districts adopted pursuant to ConnectMenlo and updates to the second unit ordinance.**

Impact on City Resources

This action will result in additional in lieu fees to the City's affordable housing program.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it is an organizational structure change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 24 hours prior to the meeting.

Attachments

- A. Ordinance updating the City's Below Market Rate and State Density Bonus provisions
- B. Updates to City's Below Market Rate Program Guidelines

Report prepared by:

Cara E. Silver, Assistant City Attorney

ORDINANCE NUMBER _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO
PARK AMENDING CHAPTER 16.96 [BELOW MARKET RATE
HOUSING PROGRAM] AND CHAPTER 16.97 [STATE DENSITY
BONUS LAW] OF TITLE 16 [ZONING] OF THE MENLO PARK
MUNICIPAL CODE**

The City Council of the City Menlo Park does hereby ordain as follows:

SECTION 1. FINDINGS AND DETERMINATIONS.

- A. There is an increased need for housing in the San Francisco Bay Area as more than two million new residents will be added by 2040.
- B. An inadequate supply of housing exists in the city and an increasing demand continues to grow for such housing.
- C. On September 15, 2017, the Legislature recently adopted a series of 15 housing bills.
- D. In order to fully comply with the most recent California legislation, the City of Menlo Park must amend its Zoning Code.
- E. The City Council of the City of Menlo Park finds and declares an amendment to Chapters 16.96 and 16.97 is necessary for the reasons above.

SECTION 2. AMENDMENT OF CODE. Chapter 16.96 [Below Market Rate Housing Program] of Title 16 [Zoning] is hereby amended as follows with additions shown in underline and deletions shown as ~~strikeout~~:

**Chapter 16.96
BELOW MARKET RATE HOUSING PROGRAM**

Sections:

- [16.96.010](#) Purpose.
- [16.96.020](#) Residential development projects.
- [16.96.030](#) Commercial development projects.
- [16.96.040](#) Development regulations for below market rate units.
- [16.96.050](#) Below market rate housing fund.
- [16.96.060](#) Below market rate housing program guidelines.
- [16.96.070](#) Rental housing alternative means of compliance.
- [16.96.080](#) Administrative relief

16.96.010 Purpose.

The purpose of the below market rate (BMR) housing program is to increase the housing supply for households that have very low, low and moderate incomes compared to the median household income for San Mateo County. The primary objective is to create actual housing units, either "rental" or "for purchase" units, rather than equivalent cash. The below market rate requirements associated with residential development projects are

a form of "inclusionary zoning." The below market rate requirements associated with commercial development projects are a form of "linkage." This chapter authorizes the below market rate housing program. The program is implemented through guidelines as adopted and amended from time to time by the City Council.

16.96.020 Residential development projects.

(a) Applicability. This section shall apply to conditional use permits, conditional development permits, planned development permits, subdivision approvals, architectural control approvals, variance approvals, and building permits for any residential development project of five (5) or more units. This section also applies to condominium conversions.

(b) Requirements. For residential development projects of less than twenty (20) units, the developer shall provide not less than ten percent (10%) of the units at below market rates to very low-, low- and moderate-income households. For residential development projects of twenty (20) or more units, the developer shall provide not less than fifteen percent (15%) of the units at below market rates to very low-, low- and moderate-income households. If the number of units required for a residential development project includes a fraction of a unit, the developer shall provide either a whole unit or a prorata in lieu payment on account of such fraction as determined in the below market rate housing program guidelines. The requirements of this section may be met through the provision of on-site or off-site below market rate units as determined by the housing commission and the reviewing body (i.e., planning commission or City Council).

(c) Review Process. As part of an application for an applicable residential development project, the developer shall submit a below market rate housing agreement. The agreement shall set forth the developer's plan to meet the requirements of this section. The agreement shall be reviewed by the housing commission and forwarded with a recommendation to the reviewing body for the application request. The reviewing body shall act on the agreement prior to or concurrently with the action on the application request. No building permit or other land use authorization may be issued or approved unless the requirements of this section have been met.

16.96.030 Commercial development projects.

(a) Applicability. This section shall apply to conditional use permits, conditional development permits, planned development permits, subdivision approvals, architectural control approvals, variance approvals, and building permits for any commercial development project or the construction of such project or any portion thereof which includes any new square footage or any square footage that is converted from an exempt use to a non-exempt use or from a Group B (all other commercial/industrial uses) use to a Group A (office/R&D) use.

(b) Exemptions. The following uses are exempt from this section:

- (1) Private schools and churches;
- (2) Public facilities;
- (3) Commercial development projects of less than ten thousand (10,000) square feet;

(4) Projects that generate few or no employees.

(c) Requirements. The developer shall mitigate the demand for affordable housing created by the commercial development project. The below market rate housing program guidelines provides various alternatives for mitigation. A commercial development project may be required to provide below market rate housing on-site (if allowed by the zoning district) or off-site. If it is not feasible to provide below market rate housing units, the developer shall pay an in-lieu fee prior to issuance of a building permit as follows:

(1) Group A use: Eleven dollars and eighty-nine cents (\$11.89) per square foot of new gross floor area;

(2) Group B use: Six dollars and forty-eight cents (\$6.48) per square foot of new gross floor area.

The in-lieu fee shall be adjusted annually on the first of July, in accordance with the guidelines.

(d) Review Process. As part of an application for a commercial development project, the developer shall submit a below market rate housing agreement. The agreement shall set forth the developer's plan to meet the requirements of this section. The agreement shall be reviewed by the housing commission and forwarded with a recommendation to the reviewing body (i.e., planning commission or City Council) for the application request. The reviewing body shall act on the agreement prior to or concurrently with the action on the application request. No building permit or other land use authorization may be issued or approved unless the requirements of this section have been met.

16.96.040 Development regulations for below market rate housing units.

(a) Generally. The provisions of this section shall apply only to housing developments [and mixed-use developments that include housing](#) that provide one (1) or more below market rate units in accordance with the provisions of this chapter. This section is intended as an alternative to the State Density Bonus Law, the enabling ordinance for which is set forth in Chapter 16.97 of the Menlo Park Municipal Code. Housing developments and mixed-use projects including housing may elect to utilize the bonuses and incentives under this Chapter or Chapter 16.97, but not both.

(b) Density and FAR bonuses. For each below market rate unit provided under the below market rate housing program, a developer shall be permitted to build one (1) additional market-rate unit and, in the case of a subdivision, to create a legal lot or condominium unit for such additional unit. In addition, a developer shall be permitted to increase the floor area associated with the residential development project by an amount that corresponds to the increase in allowable density. Requests for density bonuses of a maximum of fifteen percent (15%) are subject to approval of the reviewing body (i.e., planning commission or City Council) associated with the required application.

(c) Incentives. The following incentives may be requested, if applicable:

(1) To accommodate the increase in allowable density and floor area ratio described in subsection (b) of this section, the developer may request exceptions from all development regulations of the applicable zoning district of a residential development project that includes below market rate units, except for floor area ratio and density.

(2) Development on a parcel of less than one (1) acre in area but greater than or equal to twenty thousand (20,000) square feet where the number of BMR units developed on the site exceeds the required number of BMR units by a fractional equivalent of more

than one-half (0.5) of a unit may request exceptions from development regulations as specified in Sections [16.82.050](#) through [16.82.100](#) Conditional Development Permits.

16.96.050 Below market rate housing fund.

Fees paid pursuant to this chapter shall be deposited in the below market rate housing fund as described in the below market rate housing program guidelines.

16.96.060 Below market rate housing program guidelines.

The provisions of this chapter shall be implemented through the below market rate housing program guidelines as adopted by the City Council on January 12, 1988, and subsequently amended.

16. 96. 070 Rental housing alternative means of compliance.

For any rental housing development subject to this chapter, the applicant may comply with the requirements of this chapter by providing in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units. Any alternative means of compliance shall be approved by the City Council upon findings that the alternative is commensurate with the applicable on-site requirement and complies with applicable program guidelines.

16.96.080 Administrative relief.

(a) As part of the initial application submittal for a residential or nonresidential project to which this chapter is applicable, a developer may request that the requirements of this chapter be waived or modified by the City Council, based upon a showing that applying the requirements of this chapter would result in an unconstitutional taking of property or would result in any other unconstitutional result.

(b) The request for a waiver or modification shall set forth in detail the factual and legal basis for the request.

(c) Any request for a waiver or modification shall be reviewed and considered at the same time as the project application.

(d) The waiver or modification may be approved only to the extent necessary to avoid an unconstitutional result, based upon legal advice provided by or at the behest of the city attorney, after adoption of written findings, based on legal analysis and substantial evidence.

SECTION 3. AMENDMENT OF CODE. Chapter 16.97 [State Density Bonus Law] of Title 16 [Zoning] is hereby amended as follows with additions shown in underline and deletions shown in ~~strikeout~~:

**Chapter 16.97
STATE DENSITY BONUS LAW**

Sections:

[16.97.010](#) Purpose.

[16.97.020](#) Definitions.

<u>16.97.030</u>	Applicability.
<u>16.97.040</u>	Application requirements.
<u>16.97.050</u>	Density bonus.
<u>16.97.060</u>	Incentives.
<u>16.97.070</u>	Discretionary approval authority retained.
<u>16.97.080</u>	Waivers.
<u>16.97.085</u>	Specific plan exemptions.
<u>16.97.090</u>	Affordable housing agreement.
<u>16.97.100</u>	Design and quality.

16.97.010 Purpose.

The purpose of this chapter is to adopt an ordinance that specifies how compliance with Government Code Section 65915 ("State Density Bonus Law") will be implemented in an effort to encourage the production of low income housing units in developments proposed within the city.

16.97.020 Definitions.

Unless otherwise specified in this chapter, the definitions found in state density bonus law shall apply to the terms contained herein.

16.97.030 Applicability.

This chapter shall apply to all zoning districts, including mixed use zoning districts, where residential developments of five (5) or more dwelling units are proposed and where the applicant seeks and agrees to provide low, very low, senior or moderate income housing units in the threshold amounts specified in state density bonus law such that the resulting density is beyond that which is permitted by the applicable zoning. This chapter and state density bonus law shall apply only to the residential component of a mixed use project and shall not operate to increase the allowable density of the nonresidential component of any proposed project.

16.97.040 Application requirements.

(a) Any applicant requesting a density bonus, incentive(s) and/or waiver(s) pursuant to state density bonus law shall provide the city with a written proposal. The proposal shall be submitted prior to or concurrently with filing the planning application for the housing development and shall be processed in conjunction with the underlying application.

(b) The proposal for a density bonus, incentive(s) and/or waiver(s) pursuant to state density bonus law shall include the following information:

(1) Requested Density Bonus. The specific requested density bonus proposal shall evidence that the project meets the thresholds for state density bonus law. The proposal shall also include calculations showing the maximum base density, the number/percentage of affordable units and identification of the income level at which such units will be restricted, additional market rate units resulting from the density bonus allowable under state density bonus law and the resulting unit per acre density. The density bonus units shall not be included in determining the percentage of base units that qualify a project for a density bonus pursuant to state density bonus law.

(2) Requested Incentive(s). The request for particular incentive(s) shall include a pro forma or other report evidencing that the requested incentive(s) results in identifiable, financially sufficient and actual cost reductions that are necessary to make the housing units economically feasible. The report shall be sufficiently detailed to allow the city to verify its conclusions. If the city requires the services of specialized financial consultants to review and corroborate the analysis, the applicant will be liable for all costs incurred in reviewing the documentation.

(3) Requested Waiver(s). The written proposal shall include an explanation of the waiver(s) of development standards requested and why they are necessary to make the construction of the project physically possible. Any requested waiver(s) shall not exceed the limitations provided by Section 16.97.080 and to the extent such limitations are exceeded will be considered as a request for an incentive.

(4) Fee. Payment of the fee in an amount set by resolution of the city council to reimburse the city for staff time spent reviewing and processing the state density bonus law application submitted pursuant to this chapter.

16.97.050 Density bonus.

(a) A density bonus for a housing development means a density increase over the otherwise maximum allowable residential density under the applicable zoning and land use designation on the date the application is deemed complete. The amount of the allowable density bonus shall be calculated as provided in state density bonus law. The applicant may select from only one of the income categories identified in state density bonus law and may not combine density bonuses from different income categories to achieve a larger density bonus.

(b) In the sole discretion of the city council, the city council may approve a density bonus and/or incentive(s) in accordance with state density bonus law for a project that does not maximize the underlying base zoning density. Additionally, nothing herein prevents the city from granting a greater density bonus and additional incentives or waivers than that provided for herein, or from providing a lesser density bonus and fewer incentives and waivers than that provided for herein, when the housing development does not meet the minimum thresholds.

(c) The density bonus, incentives and waivers provided pursuant to state density bonus law ~~is~~are not additive with and shall not be combined with the density bonus provided pursuant to Chapter 16.96.040 (FAR and Density Bonus) or Chapter 16.98 (Affordable Housing Overlay).

(d) An applicant shall be ineligible for a density bonus or any other incentives or waivers under this Chapter if the housing development displaces qualifying rental dwelling units, unless the development replaces those units in accordance with State law.

SECTION 4. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 5. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") under Sections 15378 and 15061(b)(3) of the of the CEQA Guidelines. The ordinance is a clean up ordinance and has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 6. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.

INTRODUCED on the __ day of _____, 2018.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the __ day of _____, 2018, by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

ABSTAIN: Councilmembers:

APPROVED:

Mayor

ATTEST:

Clay Curtin, Interim City Clerk

BELOW MARKET RATE HOUSING PROGRAM GUIDELINES

~~The rental BMR provisions contained in this document are not currently enforceable due to the Palmer court decision. The severability clause (13.6) allows the remainder of the guidelines to remain in effect. If changes are made to state law that allow the resumption of rental BMR programs, these provisions will be reinstated or changed as needed to comply with state law.~~

~~May 4, 2014~~

Income Limits/Section 14, Tables A and B Updated for 2017-18

Originally Adopted by City Council on January 12, 1988

Revised by City Council on the following dates:

- December 17, 2002 (No Resolution)
- March 25, 2003 (Resolution No. 5433)
- January 13, 2004 (No Resolution)
- March 22, 2005 (Resolution No. 5586)
- March 2, 2010 (Resolution No. 5915)
- May 10, 2011 (No Resolution)
- May 6, 2014 (Resolution No. 6196)
- February XX, 2018 (Resolution No. XX)

BELOW MARKET RATE HOUSING PROGRAM GUIDELINES

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1. OVERVIEW

The high cost and scarcity of housing in Menlo Park have been caused in large part because the number of jobs in Menlo Park has grown, but the supply of housing has not increased significantly. A majority of new employees earn low- and moderate-incomes and are most severely impacted by the lack of affordable housing in Menlo Park. Because of the high cost of housing, families who seek to live in Menlo Park cannot afford to purchase homes here and are forced to rent. Many renters pay a disproportionately high amount of their incomes in rent.

1.1 Purpose. The City of Menlo Park's Below Market Rate (BMR) Housing Program is intended to increase the housing supply for households that have very low, low- and moderate-incomes compared to the median income for San Mateo County. The primary objective is to obtain actual housing units, either "rental" or "for sale," rather than equivalent cash. Occupancy of BMR units is determined according to these City Council established guidelines from those on a numbered waiting list maintained by the City or its designee.

1.2 Enabling Legislation. The Below Market Rate Housing Program is governed by Chapter 16.96 of the Municipal Code. The BMR Program is administered under these Below Market Rate Housing Program Guidelines ("Guidelines").

2. BMR HOUSING AGREEMENT AND REVIEW PROCESS

2.1 BMR Housing Agreement. Before acceptance of plans for review by the City of Menlo Park staff, a developer should provide a proposal for meeting the requirements of the Below Market Rate Housing Program. The proposal should include one or a combination of the following alternatives: a) Provision of BMR units on site; and/or b) Provision of BMR units off site; and/or c) Payment of an in lieu fee. These alternatives are listed in order of preference.

2.2 Review Steps. The following review steps apply to most development projects:

- City Staff will review a BMR For-Sale Agreement or the Affordability Restriction Agreement (collectively, "BMR Housing Agreement"), that has been prepared by the developer's attorney on a form substantially similar to that provided by the City and shall make a recommendation with respect to it to the Planning Commission and, if applicable, the City Council.
- The Planning Commission will review the application for development with the BMR Housing Agreement. The City Attorney must approve the BMR Housing Agreement prior to its review by the Planning Commission. If the City Council has final approval authority for the project, the Planning Commission will recommend the BMR Housing Agreement for

City Council approval. Otherwise the Planning Commission will approve the BMR Housing Agreement.

- The City Council grants approval of the BMR Housing Agreement for projects which it reviews. The BMR Housing Agreement must be immediately signed and recorded after City Council approval.

3. REQUIREMENTS FOR DEVELOPMENTS BY TYPE

3.1 Commercial Developments. The Below Market Rate Housing Program requires commercial developments which bring employees to Menlo Park to provide BMR units or to contribute to the BMR Housing Fund that is set up to increase the stock of housing for very low-, low- and moderate-income households, with preference for workers whose employment is located in the City of Menlo Park, and for City residents.

3.1.1 Commercial Development Requirements. Commercial buildings of ten thousand (10,000) square feet or more gross floor area are required to mitigate the demand for affordable housing created by the commercial development project. In order to do so, it is preferred that a commercial development project provide below market rate housing on-site (if allowed by zoning), or off-site, if on-site BMR units are infeasible. A density bonus of up to fifteen percent (15%) above the density otherwise allowed by zoning may be permitted when below market rate housing is provided on-site. The BMR Housing Agreement will detail the BMR Housing Program participation of a particular development.

Although the provision of actual BMR units is strongly preferred, it is not always possible to provide BMR housing units. In such cases, the developer shall pay a commercial in-lieu fee rather than provide actual BMR housing units. Commercial in lieu fees must be paid prior to the issuance of a building permit.

Commercial in lieu fees are charged at different rates to two groups based on the employee housing demand the uses produce. Group A uses are office and research and development (R & D). Group B uses are all other uses not in Group A.

Commercial in lieu fee rates are adjusted annually on July 1st. The amount of the adjustment is based on a five-year moving average of the percentage increase in the Consumer Price Index (Shelter Only) for All Urban Consumers in the San Francisco-Oakland-San Jose area.

(Refer to Section 14, Table D, for the current year's Commercial In lieu Fee Rates.)

3.1.2 Applicability. The BMR Housing Program applies to conditional use permits, conditional development permits, planned development permits, subdivision approvals, architectural control approvals, variance approvals and building permits for any commercial development. The BMR Housing Program also applies to the construction of any new square footage or any square footage that is converted

from an exempt use to a non-exempt use. Finally, the BMR Housing Program applies to the conversion of floor area from a less intensive use (Commercial/Industrial uses) to a more intensive use (Office/R&D).

3.1.3 Exemptions. The following are exempted from the BMR Housing Program:

- (a) Private schools and churches;
- (b) Public facilities;
- (c) Commercial development projects of less than ten thousand (10,000) square feet; and
- (d) Projects that generate few or no employees.

3.2 Residential Developments. The Below Market Rate Housing Program requires residential developments which use scarce residentially zoned land in Menlo Park to provide BMR units or to contribute to the BMR Housing Fund. The BMR Fund is set up to increase the stock of housing for very low-, low- and moderate-income families, with preference for workers whose employment is located in the City of Menlo Park, and for City residents.

3.2.1 Residential Development Requirements. Residential developments of five (5) or more units are subject to the requirements of the Below Market Rate Housing Program. These requirements also apply to condominium conversions of five (5) units or more. As part of the application for a residential development of five (5) or more units, the developer must submit a Below Market Rate Housing Agreement, in a form substantially similar to that provided by the City, which details the developer's plan for participation in the BMR Program. No building permit or other land use authorization may be issued or approved by the City unless the requirements of the BMR Program have been satisfied.

3.2.2 Condominium Conversions. If an apartment complex already participating in the BMR program elects to convert the complex to condominiums, then the existing BMR rental apartments shall be converted to BMR condominium units under the BMR Housing Program.

When market rate rental units are removed from the rental housing stock for conversion to condominiums, and they are not already participating in the BMR Program, then the project shall meet the same requirements as new developments to provide BMR units in effect at the time of conversion. When the property owner notifies the City of the intent to sell, the property owner shall notify any BMR tenants of such units of the pending sale and non-renewal of lease. Such tenant(s) shall be given the right of first refusal to purchase the unit. If the tenant seeks to purchase the unit, at the close of escrow the unit shall exist as a For-Sale BMR unit. If the tenant does not seek to purchase, the tenant shall vacate the unit at the expiration of the current lease term

and the unit will be sold to an eligible third party according to the BMR Guidelines and held as a for-sale BMR unit. The tenant who vacates will have priority to move to other vacant BMR rental units in the City for two (2) years from the date the lease expired, regardless of the place of residence of the displaced BMR tenant.

3.3 Mixed Use Developments. Mixed use developments must comply with the requirements for commercial developments in the commercial portion of the development and must comply with the requirements for residential developments for the residential portion of the development.

3.4 Required Contribution for Residential Development Projects. All residential developments of five (5) units or more are required to participate in the BMR Program. The preferred BMR Program contribution for all residential developments is on-site BMR units. For rental residential development projects, the applicant may comply with the City's BMR requirements by providing in-lieu fees, land dedication, off-site construction, or acquisition and rehabilitation of existing units. Any alternative means of compliance shall be approved by the City Council upon findings that the alternative is commensurate with the applicable on-site requirement and complies with applicable program guidelines.

For ownership residential development projects, if providing on-site BMR units that is not feasible as confirmed by the City, developers are required to pay an in lieu fee as described in Section 4.3. The requirements for participation increase by development size as shown below:

One (1) to Four (4) Units. Developers are exempt from the requirements of the BMR Housing Program.

Five (5) to Nine (9) Units. It is preferred that the developer provide one (1) unit at below market rate to a very low-, low-, or moderate-income household.

Ten (10) to Nineteen (19) Units. The developer shall provide not less than ten percent (10%) of the units at below market rates to very low-, low- and moderate-income households.

Twenty (20) or More Units. The developer shall provide not less than fifteen percent (15%) of the units at below market rates to very low-, low- and moderate-income households. On a case-by-case basis, the City will consider creative proposals for providing lower cost units available to lower income households such as smaller unit size, duet-style, and/or attached units that are visually and architecturally consistent with the market-rate units on the exterior, and that meet the City's requirements for design, materials, and interior features of BMR units.

3.4.1 Fraction of a BMR Housing Unit. If the number of BMR units required for a residential development project includes a fraction of a unit, the developer shall provide either a whole unit, the preferred form of participation, or make a pro rata residential in lieu payment on account of such fraction per Section 4.3 or 4.4, as applicable.

Example: A residential project is developed with 25 condominium units. The preferred BMR Program participation is 4 BMR units. In this case the developer would pay no in lieu fee. If the developer is able to demonstrate that producing four BMR units is not feasible, the developer would provide three BMR units, which is the required amount for a 20 unit project. The developer would be eligible for three bonus units for the three BMR units, and would pay in lieu fees for the remaining two market rate units in the development.

4. BMR PROGRAM REQUIREMENTS FOR ON-SITE BMR UNITS, OFF-SITE BMR UNITS AND IN LIEU FEES

4.1 On-Site BMR Units.

4.1.1 Initial Price for For-Sale Unit. The initial selling price of BMR For-Sale units is based on what is affordable to households with incomes at One Hundred Ten Percent (110%) of the median income related to household size, as established from time to time by the State of California Housing and Community Development Department (HCD) for San Mateo County. See Section 14, Table A.

4.1.2 Initial Price for Rental Unit. The initial monthly rental amounts for BMR rental units will be equal to or less than thirty percent (30%) of sixty percent (60%) of median- income limits for City subsidized projects and thirty percent (30%) of Low-Income limits for non-subsidized private projects, minus eligible housing costs. In no case shall the monthly rental amounts for BMR units (subsidized or unsubsidized) exceed 75% of comparable market rate rents. The maximum rent for specific BMR units will be based on Section 14, Table B of the BMR Guidelines. See also Sections 11.1.1 and 11.1.2.

The purchase or rental price for BMR units shall be established and agreed upon in writing by the City Manager, or his or her designee, prior to final building inspection for such BMR units.

4.1.3 Bonus Unit. For each BMR unit provided, a developer shall be permitted to build one additional market rate (bonus) unit. However, in no event shall the total number of units in a development be more than fifteen percent (15%) over the number otherwise allowed by zoning.

4.2 Off-Site BMR Units. If authorized by the City as described in Section 2.2, developers may propose to provide BMR units at a site other than the proposed development. These off-site BMR units must be provided on or before completion of the proposed development and must provide the same number of units at below market rates to very low-, low- and moderate-income households as required for on-site developments. Such units may be new or existing. Provision by the developer and acceptance by the City of off-site units shall be described in the BMR Housing Agreement. Size, location, amenities and condition of the BMR units shall be among the factors considered by the City in evaluating the acceptability of the off-site BMR units. For existing units the developer shall be responsible for correcting, at his

expense, all deficiencies revealed by detailed inspection of the premises by qualified inspectors, including a certified pest inspector.

The initial price or rent for the BMR units shall be established as stated in Sections 4.1.1 and 4.1.2 and in accordance with the BMR Income Guidelines in Section 14 in effect at the time the BMR unit is ready for sale or rent. Fractions of required BMR units shall be handled by provision of an in lieu fee for the market rate units for which no BMR unit is provided.

4.3 Ownership Residential In Lieu Payments Based on Sales Price.

4.3.1 Developments of Ten (10) or More Units. In developments of ten (10) or more units, the City will consider an in lieu payment alternative to required BMR units only if the developer substantiates to the City's satisfaction that the BMR units cannot be provided on or off site. In developments of ten (10) or more units which provide BMR units, upon the close of escrow on the sale of each unit in the subdivision for which a BMR unit has not been provided, the developer shall pay to the City an in lieu payment calculated at three percent (3%) of the actual sales price of each unit sold. In lieu payments for fractions of BMR units shall be determined by disregarding any bonus units and as three percent (3%) of selling price of each market rate unit sold if the developer substantiates to the City's satisfaction that the BMR units cannot be provided on or off-site.

If a portion of a BMR requirement is met by a provision of BMR units, and the developer substantiates to the City's satisfaction that a sufficient number of BMR units cannot be provided on or off site, then BMR in lieu payments will be required from the sales of the number of market rate units (excluding bonus units) that is in proportion to the BMR requirement that is not met.

4.3.2 Developments of Five (5) to Nine (9) Units.

Residential In Lieu Payments Based on Sales Price. In developments of five (5) to nine (9) units, the City will consider an in lieu payment alternative to required BMR units only if the developer cannot provide an additional BMR unit. If providing an additional BMR unit is not feasible, developers are required to pay a residential in lieu fee as described below.

<u>Unit No.</u>	<u>In lieu fee for each unit</u>
1, 2 and 3	1% of the sales price
4, 5 and 6	2% of the sales price
7, 8 and 9	3% of the sales price

Example: In a development of 7 units, the BMR contribution would be, in order of preference: a) One BMR unit out of the seven units, with the possibility of a density bonus of one unit, or, if that is not feasible, b) Three units designated to pay an in lieu

fee of 1% of the sales price, three units to pay in lieu fees of 2% of their sales prices and one unit to pay 3% of its sales price.

Units paying in lieu fees are designated so that they are distributed by unit size and location throughout the project.

In developments of 10 or more units which provide BMR units, upon the close of escrow on the sale of each unit in the subdivision for which a BMR unit has not been provided, the developer shall pay to the City an in lieu payment calculated at 3% of the actual sales price of each unit sold.

Example: Two possible plans to meet the BMR requirement for a project of 15 housing units are, in order of preference: a) Two BMR units are provided, and no in lieu fees are paid, or b) One BMR unit is provided out of the first ten units, one bonus unit is granted for the provision of the BMR unit, and four units pay in lieu fees.

Units held as rental, in lieu fee. If the developer retains any completed unit as a rental, either for its own account or through subsidiary or affiliated organizations, the BMR contribution including BMR housing unit or in lieu payment for such unit shall be negotiated between the developer and the City. If an in lieu fee is paid, the market value shall be based on an appropriate appraisal by an appraiser agreed upon by the City and the developer and paid for by the developer. The basis for such appraisal shall be as a condominium rather than as a rental.

4.4 Rental Residential In Lieu Payments Based on Cost.

[INSERT IN LIEU FEE – based on cost of land and design/construction costs]

Commented [CES1]: Clarify that this provision also applies to fractional rental units.

5. CHARACTERISTICS OF BMR UNITS

5.1 Size and Location of BMR Units. BMR housing units shall generally be of the same proportionate size (number of bedrooms and square footage) as the market-rate units. The BMR units should be distributed throughout the development and should be indistinguishable from the exterior. BMR units shall contain standard appliances common to new units, but need not have luxury accessories, such as Jacuzzi tubs. The Planning Commission and/or City Council shall have the authority to waive these size, location and appearance requirements of BMR units in order to carry out the purposes of the BMR Housing Program and the Housing Element.

5.2 Design and Materials in BMR Units. The design and materials used in construction of BMR units shall be of a quality comparable to other new units constructed in the development, but need not be of luxury quality.

5.3 The BMR Price Must Be Set Before Final Building Inspection. There shall be no final inspection of BMR housing units until their purchase or rental prices

have been agreed upon in writing by the developer and the City Manager, or his or her designee. Also, the sale or rental process will not begin until the sales price is set.

5.3.1 Final Inspection Schedule for Smaller and Larger Developments.

Less Than Ten (10) Units. In developments of less than ten (10) units with one (1) or more BMR units, all BMR units must pass final inspection before the last market rate unit passes final inspection.

Ten (10) to Nineteen (19) Units. In developments of ten (10) or more units, including developments that are constructed in phases, for the first ten (10) housing units, a BMR unit must pass final inspection before nine (9) market rate units may pass final inspection. For each additional group of ten (10) housing units, one (1) additional BMR unit must pass final inspection before nine (9) additional market rate units may pass final inspection.

Twenty (20) or More Units. In developments of twenty (20) or more units, including developments that are constructed in phases, for the first ten (10) housing units, a BMR unit must pass final inspection before nine (9) market rate units may pass final inspection. In addition, two (2) additional BMR units must pass final inspection before eight (8) additional market rate units may pass final inspection. For each additional group of Twenty (20) housing units, three (3) additional BMR units must pass final inspection before seventeen (17) additional market rate units may pass final inspection. No project or phase may pass final inspection unless all the BMR units, which equal fifteen percent (15%) or more of the housing units in that phase or project, have passed final inspection for that phase or project.

Last Unit. In no case may the last market rate unit pass final inspection before the last BMR unit has passed final inspection.

5.4 Sales Price Determination for BMR For-Sale Units. The maximum sales price for BMR units shall be calculated as affordable to households on the BMR waiting list, which are eligible by income at the time that the maximum prices are set and which are of the smallest size eligible for the BMR units (excluding two-bedroom units, which shall be based on incomes for two person households even when units are made available to one person households). See Section 14, Table A, for income eligibility limits for the current year. The affordability of maximum prices will take into consideration mortgage interest rates, minimum down payments, mortgage debt-to-income ratios and other qualifying criteria used by lenders at the time the sales prices are set, as well as cost of insurance, taxes, homeowners' dues and any other necessary costs of homeownership.

5.4.1 Price Determination for Projects with Condominium Maps That Will Rent for an Indefinite Period of Time. Projects with condominium subdivision maps that will rent BMR units for an indefinite period shall have basic sales prices established at the outset for such BMR units in accordance with the Guidelines. Such initial sales prices shall be adjusted for the period between the month of

completion of the BMR units and the month of notification of intent to sell the units, with further adjustments for improvements and deterioration per the Guidelines. The adjustments shall be based on one-third of the increase in the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics, plus certain other equitable adjustments.

5.5 Legal Characteristics of BMR Units: Right of First Refusal and Deed Restrictions. All BMR units shall be subject to deed restrictions and conditions which include a right of first refusal in favor of the City for a period of fifty-five (55) years under which the City or its designee will be entitled to purchase the property at the lower of (1) market value, or (2) the purchase price paid by seller, plus one-third of the increase (during the period of seller's ownership) in the Consumer Price Index (CPI), All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics, plus certain other equitable adjustments. The deed restrictions will also prohibit sales or transfers of the property except with the written consent of the City and at a price computed as above. Exceptions from all prohibitions against sale or transfer will include:

- (1) Demonstrated unlikelihood of obtaining a qualified buyer within a reasonable period;
- (2) Transfer by termination of joint tenancy or by gift or inheritance to parents, spouse, children, grandchildren or their issue.

The prohibition against sales or transfers will not terminate at the end of fifty-five (55) years in the event of an exempt transfer by termination of joint tenancy or by gift or inheritance to family members. The prohibition against sales or transfers will terminate in the event of an exempt sale or transfer when there is a demonstrated unlikelihood of obtaining a qualified buyer within a reasonable period of time.

In the event of an exempt sale when there is a demonstrated unlikelihood of obtaining a qualified buyer within a reasonable period of time, the seller will be entitled to receive the lesser of (A) market value or (B) the purchase price paid by the seller plus one-third of the increase (during the seller's ownership) in the CPI, plus certain other equitable adjustments, as specified in the deed restrictions. The balance of the proceeds shall be paid to the City of Menlo Park to be deposited in the BMR Housing Fund. Any transferee pursuant to an exempt transfer by termination of joint tenancy or by gift or inheritance to family members must reside in the BMR unit and must qualify under the income criteria of the BMR Program at the time of the transfer of the BMR unit.

6. ELIGIBILITY REQUIREMENTS FOR HOUSEHOLDS APPLYING TO PURCHASE BMR UNITS

Note: Eligibility requirements for households that wish to be placed on the BMR waiting list are identified in Section 7. The requirements identified below apply at the actual time of application to purchase a BMR unit. In order for a

household to be eligible at the time of application to purchase, **ALL** of the following requirements must be met:

6.1 BMR Waiting List. Applicants are eligible to have their names placed on the BMR waiting list if they meet the following three requirements at the time they submit an application for the waiting list: (1) currently live or work within incorporated Menlo Park; (2) meet the current income limit requirements (per household size) for purchase of a BMR unit; and (3) all applicants currently live together as a household.

6.1.1 Definition of Household. For the purposes of this program, household is defined as a single person, or two or more persons sharing residency whose income resources are available to meet the household's needs. To be considered a household, all applicants/household members must live together in a home that is their primary residence. To be considered part of the household and included in household size, children under the age of 18 (including foster children) must reside in the home at least part-time or parents must have at least partial (50%) custody of the child/children.

6.2 Live and/or Work Eligibility. Households that live and/or work within incorporated Menlo Park shall be eligible for the Below Market Rate Housing Program in accordance with the following provisions:

6.2.1 Eligibility by Living in Menlo Park. To qualify as living in Menlo Park, the applicant household must meet the following two requirements at the time of application: (1) currently live in Menlo Park as the household's primary residence and (2) must have continuously lived in Menlo Park for a minimum of one (1) year prior to the date of actual application to purchase.

6.2.2 Eligibility by Working in Menlo Park. To qualify as a household that works in Menlo Park, a member of the applicant's household must meet the following two requirements at the time of application: (1) currently work in Menlo Park at least twenty (20) hours per week, or (if currently less than 20 hours per week) hours worked over the course of the one year prior to application averages a minimum of twenty (20) hours per week and (2) must have continuously worked in Menlo Park for a minimum of one (1) year prior to the date of actual application to purchase.

6.2.2.1 Types of Work. Work is defined as (1) owning and operating a business at a Menlo Park location; (2) employment for wages or salary by an employer located at a Menlo Park location; (3) contract employment where the actual work is conducted at a Menlo Park location for one (1) year; or (4) commission work, up to and including a one hundred percent (100%) commission arrangement, conducted in Menlo Park.

6.2.2.2 Employer-Based Work. If employed for wages or salary by an employer, working in Menlo Park is defined as the employer is located in Menlo Park AND the employment/actual work is performed within incorporated Menlo Park.

6.2.2.3 Owning and Operating a Business at a Menlo Park

Location. This does NOT include owning (either wholly or in part) a residential or commercial property for investment purposes only.

6.2.2.4 Work does NOT include volunteer or unpaid work.

6.3 Household Requirement. To constitute a household, all members of the applicant household must currently live together (in a location that is their primary residence) at the time of application. Also at the time of application and regardless of where they currently live, all members who make up the applicant household must have continuously lived together for a minimum of one (1) year prior to the date of application.

Exceptions. Exceptions to this minimum one (1) year joint-residency requirement include:

- Children under the age of 18 who have recently joined the household in conjunction with marriage, separation, or divorce, or similar family re-organization, and for whom there is evidence of a custody agreement or arrangement. This also applies to foster children.
- Children born into a household.
- Households newly formed as a result of marriage.

6.4 First Time Homebuyer. All members of the applicant household must be first time homebuyers, defined as not having owned a home as your primary residence within the last three (3) years prior to the date of application. First time homebuyers DO include owners of mobile homes, as well as applicants whose names are on title for properties they have not lived in as their primary residences for the last three years (for instance rental properties, which must be considered as part of the applicant's eligibility per assets).

Exceptions. Exceptions to this requirement are:

- Applicants who are current BMR homeowners and are otherwise eligible for the BMR Program, are eligible to place their names on the BMR waiting list and to purchase a smaller or larger home needed due to changes in household size or family needs, such as for handicap accessibility (per Section 7.2.6, below).
- Applicants whose names were placed on the BMR waiting list prior to March 2, 2010.
- Applicant households that currently and/or within the last three (3) years prior to the date of application own homes as their primary residences more than fifty (50) miles outside Menlo Park city limits, that are otherwise eligible for the BMR Program.

6.5 Complete One-Time Pre-Purchase Homebuyer Education. After an applicant's name is placed on the BMR waiting list and before receiving an offer to purchase a BMR property, all adult applicants/household members must complete a one-time homebuyer education workshop, class, or counseling session. When applicants' names are placed on the waiting list to purchase BMR units, program staff provides them with a list of approved local organizations that provide pre-purchase homebuyer education. Applicants choose an education provider or program from the approved list and may choose to attend in either a group or individualized setting. It is the applicants' responsibility to provide the City or the City's BMR program provider with evidence that a pre-purchase homebuyer education workshop or session was completed. In most cases, the education providers will provide applicants with certificates of completion, which applicants can submit to the City's BMR program provider as proof that the pre-purchase education requirement was completed. Households on the waiting list that have not completed the homebuyer education requirement will retain their rank on the list but will NOT be invited to apply to purchase BMR units. Only households on the waiting list that have completed the education requirement will be invited to apply when units become available. Elderly parents of applicants living in the household need not complete the education requirement.

6.5.1 Prior Completion of Pre-Purchase Homebuyer Education. At the time of application to the BMR waiting list, applicants who provide written evidence of having completed an approved homebuyer education workshop, class, or counseling session within the previous twelve months prior to the date of application to the waiting list are not required to complete an additional workshop, class, or counseling session.

6.5.2 Homebuyer Education Provider. At the City's discretion, the City may elect to work exclusively with one or more homebuyer education providers/organizations. The City may also choose to contract with a particular person or organization to provide this educational component.

6.5.3 Long-Term Education or Counseling Required for Certain Applicants. Applicants who are invited to apply to purchase BMR units and are twice denied (on separate occasions) due to long-term or significant credit problems, will be required to meet individually with a credit counseling professional in order to remain on the waiting list. The applicant must provide evidence of completion of credit counseling within six (6) months to the City's BMR provider or the applicant will be removed from the BMR waiting list. This does not exclude the applicant from applying to the waiting list again, to be placed at the bottom of the list.

6.6 Ownership Interest. A minimum of fifty percent (50%) of the ownership interest in the property must be vested in the qualifying applicant(s), regardless of income.

6.7 Income and Asset Limits for Purchasers of BMR Units. Income eligibility limits are established by the State of California Housing and Community Development Department (HCD). Income limits are updated by State HCD on an annual basis. BMR units shall only be sold to very low-, low-, and moderate-income

households. Only households having gross incomes at or below one hundred ten percent (110%) of the Area Median Income (AMI) for San Mateo County, adjusted for household size, are eligible to purchase and occupy BMR for-sale units, either upon initial sale or upon any subsequent resale, as specified in the deed restrictions.

(Refer to Section 14, Table A, for the current year's income eligibility limits.)

An asset is a cash or non-cash item that can be converted into cash. Only households having non-retirement assets that do not exceed the purchase price of the BMR units are considered eligible.

- Assets Include: cash held in checking accounts, savings accounts, and safe deposit boxes; equity in real property; cash value of stocks (including options), bonds, Treasury bills, certificates of deposit, money market accounts, and revocable trusts; personal property held as an investment such as gems, jewelry, coin and art collections, antiques, and vintage and/or luxury cars; lump sum or one-time receipts such as inheritances, capital gains, lottery winnings, victim's restitution, and insurance settlements; payment of funds from mortgages or deeds of trust held by the applicant(s); boats and planes; and motor homes intended for primary residential use.
- Assets DO NOT Include: cars and furniture (except cars and furniture held as investments such as vintage and/or luxury cars, and antiques); company pension and retirement plans; Keogh accounts; dedicated education funds/savings accounts; and funds dedicated to federally recognized retirement programs such as 401K's and IRA's.

Note that equity in real property or capital investments is defined as follows: the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and all reasonable costs (e.g. broker/realtor fees) that would be incurred in selling the asset.

6.7.1 Senior or Disabled Households That Use Assets for Living Expenses. An exception to the income and asset limit requirement is a household whose head is over sixty-two (62) years of age, or permanently disabled and unable to work, with assets valued up to two (2) times the price of the BMR unit. The applicant must be able to demonstrate that the sole use of his/her assets has been for household support for at least the three (3) previous years, and that the total annual household income meets the Guidelines.

7. BMR WAITING LIST FOR RENTAL AND FOR-PURCHASE UNITS

7.1 Waiting List Eligibility Requirements. A numbered waiting list of households eligible for rental and/or for-purchase BMR units is maintained by the City or the City's designee. Households are eligible to be placed on the BMR waiting list if

they meet the following four (4) requirements at the time they submit applications for the waiting list:

- The household currently resides within incorporated Menlo Park as its primary residence OR a member of the household currently works at least 20 hours per week within incorporated Menlo Park.
- The household meets the current income limit requirements (per household size) for rent and/or purchase of a BMR unit. See Section 14, Table A, for income eligibility limits for the current year.
- All persons included as members of the household currently live together in a residence that is their primary home. Applicant households may submit applications and, if eligible, will be placed on the numbered BMR waiting list in the order in which their applications were received.
- In accordance with Section 6.4, all members of the household must be first time homebuyers.

7.2 Waiting List Management. BMR units available for rent or purchase are offered to households on the BMR waiting list in the order in which the waiting list applications were received.

7.2.1 Annual affirmation of continued interest in remaining on the BMR waiting list. On an annual basis, all households on the BMR waiting list will be required to confirm their continued interest in remaining on the list. At or around the same time each year, the City's BMR program provider will mail and/or email annual update forms/applications to all current households on the waiting list. Households on the waiting list that wish to remain on the list are asked to complete the form and return it to the City's BMR program provider within a specified period of time (usually about one month) with a \$10 annual fee for processing. Households who do not respond by completing and returning the forms and the fee by the specified deadline, or whose mail is returned undeliverable to the City's BMR program provider or who otherwise cannot be reached, shall be removed from the BMR waiting list. This does not exclude households removed from the waiting list from re-applying to the list, to be added to the bottom of the list in accordance with normal procedures.

7.2.2 Complete One-Time Pre-Purchase Homebuyer Education for Households That Would Like to Purchase a BMR Unit. For households that indicate they would like to purchase BMR units, after households are placed on the BMR waiting list and before receiving offers to purchase BMR properties, all adult applicants/household members must complete a one-time homebuyer education workshop, class, or counseling session, per Section 6.5.

7.2.3 When a BMR unit is offered for purchase or rent, applicants must enter into a purchase agreement or lease within a defined, reasonable period of time. If

an applicant fails to do so, the BMR unit will be offered to the next eligible applicant on the waiting list. The City of Menlo Park reserves the right to establish other criteria to give preference to certain categories of eligible participants on the waiting list.

7.2.4 A tenant of a BMR rental unit who is required to vacate the BMR rental unit due to its conversion to a BMR for sale unit, shall have first priority for vacant BMR rental units for which the tenant is eligible and qualifies for two (2) years from the expiration of the lease, regardless of the place of residence of the displaced tenant.

7.2.5 Preference for Handicap Accessible Units for Bona Fide Wheelchair Users. If the BMR unit is wheelchair accessible, then bona fide wheelchair users on the BMR waiting list who are otherwise eligible for the BMR unit, including by household size and income, will receive preference over other applicants, and the BMR unit will be offered to the bona fide wheelchair users in the order that their applications were received.

7.2.6 Households who are current BMR homeowners are eligible to place their name on the BMR waiting list and to purchase a smaller or larger home needed due to changes in their household size or family needs, such as for a handicapped accessible unit.

8. THE BMR UNIT PURCHASE PROCESS: BUYER SELECTION AND SALE PROCEDURES

8.1 New Units and Condominium Conversions.

8.1.1 The participating developer informs the City or its designee in writing that the BMR unit has received its final building inspection and that the BMR unit is ready for sale and occupancy. "The City" shall mean the City Manager, or his or her designee.

8.1.2 City of Menlo Park staff or the City's BMR program provider inspects the BMR unit. After approval of the unit, the City or the City's BMR program provider writes a certifying letter that states the BMR unit meets the BMR Program's requirements and satisfies the BMR Agreement's provisions. The certifying letter will also state the price for the BMR unit. The price for the BMR unit will be determined based on the information described in the next three sections.

8.1.3 The City or its designee obtains necessary information for determining the price of the BMR unit. These include, but may not be limited to, the estimated tax figures from the developer and the County Assessor, as well as Homeowner's Association dues, Covenants, Conditions and Restrictions, and insurance figures from the developer. Also included will be all associated Homeowner Association documentation.

8.1.4 Household size and income qualifications are established. In households in which an adult holds fifty percent (50%) or more custody of a minor child or children through a legally binding joint custody settlement, each such child shall count as a person in determining the household size.

8.1.5 The City or its designee determines the maximum price of the BMR unit based on an income up to one hundred ten percent (110%) of the San Mateo County median income for the smallest household size eligible for the BMR unit (excluding two-bedroom units, which are based on income for a two person household), monthly housing costs including current mortgage rates, insurance costs, homeowners' dues, taxes, closing costs and any other consideration of costs of qualifying for a first mortgage and purchase of the BMR unit. See Section 14, Table A, for income eligibility limits for the current year. When these documents and the information described in this and preceding sections have been received, the City will provide the developer with a certifying letter in which the City states the price for the BMR unit, accepts the BMR unit as available for purchase and the purchase period will commence.

8.1.6 If there is a standard pre-sale requirement by the BMR applicant's lender for a certain percentage of units in the project to be sold before the BMR applicant's lender will close, then the time for the City's purchase or the buyer's purchase will be extended until that requisite number of units has closed.

8.1.7 The City may retain a realtor to facilitate the sale of the property.

8.1.8 Contact is established between the City or its designee and the developer's representative to work out a schedule and convenient strategy for advertisements, if needed, when the units will be open for viewing, and for when the interested applicants may obtain detailed information about the units.

8.1.9 All marketing and sales procedures for BMR units must be approved by the City and will be subject to review on a periodic basis for compliance.

8.1.10 An information packet and application forms are designed and duplicated by the City or its designee. The developer provides information about the unit, including a floor plan of the unit and of the building showing the location of the unit, dimensions, appliances, amenities, and finishes.

8.1.11 The City or the City's BMR program provider holds an application orientation meeting(s). Households on the waiting list with the lowest numbers are contacted and invited to attend the orientation meeting(s). Only households that are eligible by household size and have completed the one-time pre-purchase education requirement are contacted and invited to attend the orientation. Applications to purchase BMR units can only be obtained by attending an application orientation meeting. At the meeting, potential applicants are provided with the following information:

- A detailed description of the BMR program, including the rights, restrictions, and responsibilities of owning a BMR home.
- A complete description of the property or properties being offered for sale including buyer eligibility requirements, the purchase price, home owner association costs (if any), estimated property taxes, and home features.
- An overview of the home loan application process and description of necessary costs including down payment (if required), closing costs, real estate taxes, and mortgage insurance.
- A description of the BMR and home loan approval process. Potential applicants are informed they must work with one of the program's approved mortgage providers. Per the City's discretion the potential applicants are also informed of the kinds of acceptable mortgage financing, and also of mortgage financing not allowed at that time (for instance negative amortizing loans).
- Based on the purchase price, estimates are provided on the minimum annual income required to purchase, as well as possible monthly housing costs including principal and interest, property taxes, and insurance payments.
- A step-by-step explanation of the BMR purchase application. If there are several sizes of units for which applicants may be eligible, applicants are instructed where to indicate their unit size preferences.

Potential applicants are invited to ask questions. Meeting attendees are invited to sign up to tour the property or properties for sale. Attendees are given applications and a reasonable deadline to submit their completed applications.

8.1.12 Completed applications are submitted to the City or its designee along with income and asset verifications.

8.1.13 When the application period closes, the City or its designee reviews the completed applications. The complete, eligible, qualifying applications are ranked in order by BMR waiting list numbers and/or other criteria established by the City. The complete applications with the lowest numbers, and meeting other qualifying criteria for each unit, if any, are selected, and the households that submitted them are notified of the opportunity to purchase the BMR unit, in the order of their numbers on the BMR waiting list. They are invited to an orientation meeting.

8.1.14 If the leading applicant for a unit fails to contact the developer, provide a deposit, or obtain appropriate financing within the period of time specified in the notification letter, the City or its designee will contact the next household on the list.

8.1.15 The City of Menlo Park or its designee submits to the title insurance company the Grant Deed, BMR Agreement and Deed Restrictions, and Request for Notice to be recorded with the deed to the property.

8.1.16 The developer shall be free to sell a BMR unit without restriction as to price or qualification of buyer if all of the following criteria are met, unless the BMR applicant's lender has a loan condition that a specific number of units in the development must be sold before the loan can be approved: (1) the City and the developer are unable to obtain a qualified buyer within six (6) months after the City has provided written notice both certifying that the unit is available for purchase and setting the price for the BMR unit, (2) the City or its designee does not offer to purchase the BMR unit within said six (6) months period, and complete said purchase within not more than sixty (60) days following the end of the six (6) month period, (3) the developer has exercised reasonable good faith efforts to obtain a qualified buyer. A qualified buyer is a buyer who meets the eligibility requirements of the BMR Program and who demonstrates the ability to complete the purchase of the BMR unit. Written notice of availability shall be delivered to the City Manager, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025. Separate written notice of availability shall also be delivered to the City Manager, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025.

9. OCCUPANCY REQUIREMENTS FOR OWNER-OCCUPIED BMR UNITS

9.1 Primary Residence. The owners listed on title to the BMR property must occupy it as their primary residence and remain in residence for the duration of the Deed Restrictions (fifty-five years). Occupancy is defined as a minimum stay of ten months in every twelve month period. BMR owners may not terminate occupancy of the BMR property and allow the property to be occupied by a relative, friend, or tenant. Failure of the purchaser to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR property is not the primary place of residence of the purchaser. As necessary, the City may request that BMR owners provide evidence that their units are currently occupied by them as their primary residences. Examples of such evidence may include current copies of any of the following: homeowner's insurance, car/vehicle registration, and utility bills.

9.2 Refinancing and BMR Valuations. BMR owners may refinance the debt on their property at any time following purchase, however, they must contact the City's designated BMR program provider first, prior to a refinance or equity line. The City's BMR contractor will provide the owner with clear instructions to ensure program compliance. At that time and at any other time the owner requests it, the BMR contractor will provide the owner and/or the lender with the current BMR value of the home, in accordance with the formula specified in the BMR Deed Restrictions. Only the City's BMR contractor can determine the appraised value of a BMR property and it is the owner's responsibility to inform their lender that the property is a BMR property. BMR owners are not allowed to take out loans against their property that exceed the BMR value of the home. There is a fee for refinancing a BMR home that is set by the City's BMR Housing contractor.

9.3 Transfers of Title. Prior to adding an additional person to title or transferring title to the BMR property, BMR owners must contact the City for clear instructions to ensure program compliance.

The following transfers of title are exempt from the City's right of first refusal and do NOT re-start the fifty-five (55) year deed restriction clock:

- Transfer by devise or inheritance to the owner's spouse.
- Transfer of title by an owner's death to a surviving joint tenant, tenant in common, or a surviving spouse of community property (that is, another owner already on title).
- Transfer of title to a spouse as part of divorce or dissolution proceedings.
- Transfer of title or an interest in the property to the spouse in conjunction with marriage.

Transfers by devise or inheritance (such as to a child or other family member), are permitted under certain terms and conditions identified in the BMR Deed Restrictions. These kinds of transfers must first be reviewed and approved by the City or the BMR program contractor. If the person inheriting the property meets the following terms and conditions, then that person may take title, assume full ownership, and reside in the BMR unit. This would then restart the fifty-five (55) year deed restriction clock. If the person inheriting the property does NOT meet the following terms and conditions they may still inherit the property but are not allowed to live there. In such case, the inheriting party must sell the property and shall be entitled to receive any proceeds from the sale after payment of sales expenses and all liens against the property. The property would then be sold by the City through the BMR Program to an eligible, qualified household on the BMR waiting list.

For transfers of title by devise or inheritance, the inheriting party (Transferee) must meet the following terms and conditions in order to live in the BMR unit:

- Transferee shall occupy, establish and maintain the property as the Transferee's primary residence.
- The Transferee must meet all current eligibility requirements for the BMR Program, as identified at the time of transfer in the BMR Guidelines.
- The Transferee must sign a new BMR Deed Restrictions Agreement for the property. This restarts the fifty-five (55) year clock.

10. PROCESS FOR RESALE OF BMR UNITS

10.1 The seller notifies the City by certified mail that he/she wishes to sell the unit. The City notifies its designee, if applicable. The unit must be provided in good

repair and salable condition, or the cost of rehabilitating the unit will be reimbursed to the City out of the proceeds of the sale. The definition of "salable condition" for any given unit shall be provided on a case-by-case basis following the City's inspection of the unit, and shall be at the discretion of the City Manager or his/her designee. "Salable condition" shall refer to the general appearance, condition, and functionality of all: flooring; painted surfaces; plumbing, heating, and electrical systems; fixtures; appliances; doors; windows; walkways; patios; roofing; grading; and landscaping. In addition for each unit, the City reserves the right to withhold the cost of having it professionally cleaned from the seller's proceeds. Once cleaning is complete, the seller will be refunded any difference between the amount withheld and the actual cost to clean the unit.

10.2 When the seller notifies the City or the City's BMR contractor, and it has been determined that the unit is in good repair and salable condition, and the City has set the price for the BMR unit, then the City or the City's BMR contractor will state in writing that the one-hundred and eighty day (180) period for completing the sale of the BMR unit shall commence. The price will be set using information in Sections 10.3 through 10.6 below.

10.3 The City or its designee obtains an appraisal made to ascertain the market value of the unit, giving consideration to substantial improvements made by the seller, if needed.

10.4 The City or its designee obtains figures for homeowners' dues, insurance, and taxes from the seller.

10.5 The City or its designee checks major lending institutions active in this market to ascertain current mortgage information (prevailing interest rates, length of loans available, points, and minimum down payments). Monthly housing costs are estimated.

10.6 The City or its designee establishes a sales price, based on the original selling price of the unit, depreciated value of substantial improvements made by the seller, and 1/3 of the increase in the cost of living index for the Bay Area. The selling price is established for the unit at the appraised market value or the computed price whichever is the lower.

10.7 The City retains a realtor to facilitate the sale of the property.

10.8 Agreement is reached between seller and the City or its designee for a schedule of open houses for the unit, at the seller's convenience.

10.9 The procedure continues the same as in Sections 8.1.7 – 8.1.16 above, with the seller substituted for the developer.

10.10 The City or its designee submits to the title insurance company the Grant Deed, BMR Agreement and Deed Restrictions, and Request for Notice and the seller's

release from the old deed restrictions, to be recorded with the new deed to the property.

11. REQUIREMENTS FOR BMR RENTAL DEVELOPMENTS

11.1 Income and Rent Standards.

11.1.1 Income Limits upon Occupancy of BMR Rental Units. Only households having gross incomes at or below the Low Income for San Mateo County, adjusted for household size, are eligible to occupy BMR rental units, either when initially rented or upon filling any subsequent vacancy. See Section 14, Table A (Below Market Rate Household Income Limits).

11.1.2 BMR Rent. BMR units may be rented for monthly amounts not exceeding thirty percent (30%) of sixty (60%) of median household income limits for City subsidized projects and thirty percent (30%) of Low Income limits for non-subsidized private projects, minus eligible housing costs. In no case shall the monthly rental amounts for BMR units (subsidized or unsubsidized) exceed 75% of comparable market rate rents. The maximum rental amounts are listed in Section 14, Table B, (Maximum Monthly Housing Cost Limits for BMR Rental Units.) BMR rents may be adjusted from time to time to reflect any changes to the then current Income limits.

11.1.3 Tenant Selection and Certification Procedures. Priority for occupancy of all BMR rental units shall be given to those eligible households who either live or work in the City of Menlo Park. During the fifteen (15) day period following the date the City and its designee receive notification from the owner (or owner's agent) of an impending availability or vacancy in a BMR rental unit, priority for occupancy of that unit, when available, shall be given to eligible households on the Waiting List, on a first-come, first-served basis. The selected household shall be allowed up to thirty (30) days to move into the unit after it is ready for occupancy.

If no qualified household living or working in Menlo Park is available to occupy the vacated unit as aforesaid, the owner shall be free to rent the BMR unit to any other eligible BMR tenant.

11.1.4 BMR Waiting List. The qualifications of BMR rental tenants will be independently verified by the City or its designee. The City of Menlo Park or the City's designee shall maintain the waiting list for BMR rental units.

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

11.1.6 Vacation of Units and Re-Renting. When a BMR tenant vacates, the owner must provide notice to the City, and re-rent the unit to a qualified

BMR tenant in accordance with these Guidelines and the Affordability Restriction Agreement for the unit.

11.1.7 Annual Recertification of BMR Units. The City of Menlo Park or the City's BMR contractor will recertify annually, by procedures to be established in the Affordability Restriction Agreement, the provision of BMR rental units as agreed at the time of application for the permit. If, at the time of recertification, for two consecutive years, a Tenant's household income exceeds the eligibility requirements set forth in the Guidelines ("Ineligible Tenant"), the Ineligible Tenant shall no longer be qualified to rent the BMR unit and the Lease shall provide that the Lease term shall expire and the Tenant shall vacate the BMR unit on or prior to sixty (60) days after delivery of a notice of ineligibility by the property manager or City or City's designee to the Tenant. Upon expiration of the Lease term pursuant to the foregoing, if the Tenant has not vacated the BMR unit as required, the property manager shall promptly take steps to evict the Ineligible Tenant and replace the BMR unit with an Eligible Tenant as soon as reasonably possible.

11.1.8 Annual Report. On an annual basis on or before July 1 of each year, the Developer or subsequent owner shall submit a report (the "Annual Report") to the City which contains, with respect to each BMR unit, the name of the Eligible Tenant, the rental rate and the income and household size of the occupants. The Annual Report shall be based on information supplied by the Tenant or occupant of each BMR unit in a certified statement executed yearly by the Tenant on a form provided or previously approved by the City or designee. Execution and delivery thereof by the Tenant may be required by the terms of the Lease as a condition to continued occupancy at the BMR rate. In order to verify the information provided, City shall have the right to inspect the books and records of Developer and its rental agent or bookkeeper upon reasonable notice during normal business hours. The Annual Report shall also provide a statement of the owner's management policies, communications with the tenants and maintenance of the BMR unit, including a statement of planned repairs to be made and the dates for the repairs.

12. EQUIVALENT ALTERNATIVES

Nothing set forth herein shall preclude the City from approving ~~considering~~ reasonably equivalent alternatives to these Guidelines, including, but not limited to, in lieu fees, land dedication, off-site construction or acquisition and rehabilitation of units. Additionally, the City reserves the right to approve reasonably equivalent alternatives to the characteristics of the proposed BMR units and the affordability mix. Any modifications to these guidelines shall be approved by the City in writing and shall contain findings the size of units and differentiation of internal materials, that the alternative is commensurate with the applicable guideline requirement and is consistent with the guidelines' goals.

Commented [CES2]: Discuss appropriate findings.

13. BELOW MARKET RATE HOUSING FUND ("BMR FUND") AND SEVERABILITY CLAUSE

13.1 Purpose. The City of Menlo Park Below Market Rate Housing Fund is a separate City fund set aside for the specific purpose of assisting the development of housing that is affordable to very low, low and moderate-income households. The BMR Fund is generated by such income as in-lieu fees. All monies contributed to the BMR Fund, as well as repayments and interest earnings accrued, shall be used solely for this purpose, subject to provisions set forth below.

13.2 Eligible Uses. The BMR Fund will be used to reduce the cost of housing to levels that are affordable to very low, low and moderate-income households, as defined in the Housing Element of the City's General Plan. A preference will be given to assisting development of housing for households with minor children; however, this preference does not preclude the use of funds for other types of housing affordable to households with very low, low and moderate- incomes.

13.3 Eligible Uses in Support of Very Low-, Low- and Moderate-Income Housing Development. The BMR Fund may be used for, but is not limited, to the following:

- Provision of below market rate financing for homebuyers.
- Purchase of land or air rights for resale to developers at a reduced cost to facilitate housing development for very low, low or moderate-income households.
- Reduction of interest rates for construction loans or permanent financing, or assistance with other costs associated with development or purchase of very low, low or moderate-income housing.
- Rehabilitation of uninhabitable structures for very low, low or moderate-income housing.
- On-site and off-site improvement costs for production of affordable housing.
- Reduction of purchase price to provide units that are very low, low or moderate cost.
- Rent subsidies to reduce the cost of rent for households with limited incomes.
- Emergency repair and/or renovation loan program for BMR owners of older units.
- Loan program to assist BMR condominium owners who have no other way to pay for major special assessments.
- City staff time and administrative costs associated with implementation of the BMR program.

13.4 Procedures. Requests for use of BMR Housing Fund money shall be submitted to staff for review and recommendation to the City Council. A request for funding shall provide the following minimum information:

- A description of the proposal to be funded and the organizations involved in the project. Public benefit and relevant Housing Element policies and programs should be identified.
- Amount of funding requested.
- Identification of the number of very low, low and moderate-income households to be assisted and the specific income range of those assisted.
- Reasons why special funding is appropriate.
- Identification of loan rate, financial status of applicants, and source of repayment funds or other terms.
- Identification of leverage achieved through City funding.

13.5 Annual Report. At the close of each fiscal year, City staff shall report on activity during the previous year (deposits and disbursements) and available funds. The City's auditor shall periodically examine this report and all other BMR Fund financial records, and shall report the results of this examination. In addition, City staff shall report annually on activities assisted by monies from the BMR Fund. The report will review how the program is serving its designated purpose. It will include a discussion of the timely use of funds for actions taken to provide Below Market Rate housing units, a review of management activities, and staff recommendations for policy changes to improve the program's performance. In addition it will provide, for each activity, information corresponding to that required of funding requests listed above in Section 13.4.

13.6 Severability Clause. If any one or more of the provisions contained in the Below Market Rate Housing Program Guidelines shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provisions shall be deemed severable from the remaining provisions contained in the Guidelines, and the Guidelines shall be construed as if such invalid, illegal or unenforceable provision(s) had never been contained herein.

13.7 Administrative Updates. Future updates to tables in Section 14 may be made annually without Council approval when data becomes available from the appropriate state and federal agencies.

14. TABLES

Table A

Below Market Rate Household Income Limits

<i>Household Size</i>	<i>HUD & State Very Low</i>	<i>60% of Median</i>	<i>HUD & State Low</i>	<i>Median</i>	<i>110% of Median</i>	<i>120% of Median</i>
1	46,100	48,420	73,750	80,700	88,770	96,840
2	52,650	55,350	84,300	92,250	101,475	110,700
3	59,250	62,250	94,850	103,750	114,125	124,500
4	65,800	69,180	105,350	115,300	126,830	138,360
5	71,100	74,700	113,800	124,500	136,950	149,400
6	76,350	80,250	122,250	133,750	147,125	160,500
7	81,600	85,770	130,650	142,950	157,245	171,540
8	86,900	91,320	139,100	152,200	167,420	182,640

Source: Based on median income for a household of four persons as reported in the Income Guidelines for San Mateo County published by the Department of Housing and Community Development Division of Housing Policy Development for 2017.

<http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/inc2k17.pdf>

Table B

Maximum Monthly Housing Cost Limits for BMR Rental Units

<i>Unit Size</i>	<i><u>30% of 60% of Median</u></i>	<i><u>30% of HUD & State Low</u></i>
Studio	1,211	1,844
1	1,384	2,108
2	1,556	2,371
3	1,730	2,634
4	1,868	2,845
5	2,006	3,056

Table C
Occupancy Standards

Occupancy of BMR units shall be limited to the following:

Unit Size	Number of Persons	
	<u>Minimum</u>	<u>Maximum</u>
Studio	1	2
1	1	4
2	2	5
3	3	7
4	4	9

Note: Smallest household size for purposes of determining the maximum rental amount shall be one (1) person per bedroom or studio. The City Manager or his/her designee has the discretion to vary the persons per unit for unusually large units, not to exceed one (1) person per bedroom, plus one (1).

Table D
Commercial In-Lieu Fees for 2017-18

Group A uses are Research & Development and Office.	Fee: \$16.90 per square foot of gross floor area.
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Group B uses are all other Commercial Uses not in Group A.	Fee: \$9.17 per square foot of gross floor area.
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Commercial In-Lieu Fees are adjusted annually on July 1.