



## REGULAR MEETING AGENDA

**Date:** 5/9/2018  
**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. Presentations and Proclamations**

D1. Welcome newly appointed Housing Commissioners Horst and McPherson

D2. Home for All presentation

### **E. Regular Business**

E1. Approve minutes for the Housing Commission meeting of April 11, 2018 ([Attachment](#))

E2. BMR Guidelines changes ([Staff Report #18-009-HC](#))

E3. Anti-discrimination ordinance ([Staff Report #18-010-HC](#))

E4. Housing Commission Chair and Vice Chair Selection: May 2018 – April 2019 term

### **F. Study Session**

F1. 12 Month Lease Ordinance

### **G. Reports and Announcements**

G1. Subcommittee reports (10 minutes):

- NOFA
- Nexus
- BMR Guidelines
- Housing Policy Committee

G2. Commissioner reports

G3. Staff updates and announcements

## H. 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.

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## REGULAR MEETING MINUTES - DRAFT

**Date:** 4/11/2018  
**Time:** 6:30 p.m.  
**Arrillaga Family Recreation Center – Cypress Room**  
**700 Alma St., Menlo Park, CA 94025**

**A.** Chair Tate called the meeting to order at 6:32 p.m.

**B. Roll Call**

**Present:** Tate, McGraw-Scherer, Dodick, Merriman and Cadigan  
**Absent:** Grove, Kennedy  
**Staff:** Housing and Economic Development Manager Jim Cogan, Community Development Director Mark Muenzer, Associate Planner Kaitie Meador

**C. Public Comment**

There was no public comment.

**D. Regular Business**

D1. Approve minutes for the Housing Commission meeting of March 14, 2018 (Attachment)

**ACTION:** Motion and second (Cadigan/McGraw-Scherer) to approve the March 14, 2018, Housing Commission meeting minutes, passed (5-0-2; Grove and Kennedy absent).

D2. Consider recommending approval of a Below Market Rate (BMR) housing agreement term sheet with Peninsula Arts Guild for 949 El Camino Real (Staff Report #18-004-HC)

Community Development Director Mark Muenzer provided the staff report and offered corrections on Page 2 of the staff report regarding proposed building (non-office areas) to be changed from 10,622 to 10,662 sq. ft., and Attachment A, Item 6, existing buildings (non-office areas) component fees changed from (\$28,514) to (\$38,514), and proposed building (non-office areas) changed from 10,622 to 10,662 sq. ft.

Drew Dunlevie project applicant, provided additional details on the project.

**ACTION:** Motion and second (McGraw-Scherer/Dodick) to approve Below Market Rate housing agreement term sheet with Peninsula Arts Guild for 949 El Camino Real, passed (5-0-2, Grove and Kennedy absent).

D3. Consider recommending approval of a Below Market Rate (BMR) housing agreement term sheet with Chasen Rapp, 500 SC Partners, LLC, and 556 SC Partners, LLC, for 1125 Merrill St., 506 Santa Cruz Ave. and 556 Santa Cruz Ave. (Staff Report #18-005-HC)

Community Development Director Mark Muenzer provided the staff report and highlighted two BMR units at the 1162-1170 El Camino Real property noting, once it is redeveloped, will be utilized to satisfy the 0.9 unit residential unit obligation of the 506 Santa Cruz Ave./556 Santa Cruz Ave./1125 Merrill St. project.

Ken Hayes, project applicant, provided additional details on the project and referred to the staff report's identification of the existing structures at 1162-1170 El Camino Real as possible historic resources, expressing that it does not meet state or federal status as historically eligible. Staff will review the historical status of 1162-1170 El Camino Real.

**ACTION:** Motion and second (Cadigan/Merriman) to approve Below Market Rate housing agreement term sheet with Chasen Rapp, 500 SC Partners LLC and 556 SC Partners LLC for 1125 Merrill St., 506 Santa Cruz Ave. and 556 Santa Cruz Ave. passed (5-0-2; Grove and Kennedy absent).

- D4. Consider recommending approval of a Below Market Rate housing agreement term sheet with Michal Smulski for 409 Glenwood Ave., 417 Glenwood Ave. and 1357 Laurel St. (Staff Report #18-006-HC)

Associate Planner Katie Meader provided the staff report and noted the sensitivity of the historic structure currently located on the property as well as inclusion of one BMR unit.

**ACTION:** Motion and second (Cadigan/McGraw-Scherer) to approve Below Market Rate housing agreement term sheet with Michal Smulski for 409 Glenwood Ave., 417 Glenwood Ave. and 1357 Laurel St. passed (5-0-2; Grove and Kennedy absent).

- D5. Consider recommending that the City Council adopt an ordinance updating the community amenities requirement for bonus level development in the residential mixed-use zoning district (Staff Report #18-007-HC)

Housing and Economic Development Manager Jim Cogan provided the staff report.

Andrew Morcos with Greystar Real Estate Partners, LLC explained how possible changes to the R-MU zoning requirements might affect future development.

**ACTION:** Motion and second (McGraw-Scherer/Merriman) to approve the recommendation that City Council adopt an ordinance updating the community amenities requirement for bonus level development in the residential mixed-use zoning district, passed (5-0-2; Grove and Kennedy absent).

- D6. Consider recommending that the City Council amend the Below Market Rate housing impact fee (Staff Report #18-008-HC)

Staff Cogan recognized the work and analysis of the Nexus Fee Study Subcommittee to provide recommendation to the commission and recommended the subcommittee be present at future City Council meetings.

**ACTION:** Motion and second (Cadigan/McGraw-Scherer) to recommend that the City Council amend the Below Market Rate housing impact fee and authorize the Nexus Fee Study Subcommittee to speak, as needed, at future City Council meeting on behalf of the Housing

Commission. Motion passed (5-0-2; Grove and Kennedy absent).

**E. Informational Items**

**E1. City Council Work Plan Transmittal and CIP memo**

Staff Cogan clarified that the memo is provided for the Housing Commission's reference.

**F. Reports and Announcements**

**F1. Subcommittee reports (10 minutes):**

Notice of Funding Availability Subcommittee: McGraw-Scherer reported that the committee submitted recommendation to staff.

Nexus Fee Study Subcommittee: No report.

Below Market Rate Guidelines Subcommittee: Staff reported the proposed guidelines would return to the Housing Commission in May 2018.

Housing Policy Subcommittee: Tate reported on downtown density, BMR guidelines and homeless policies. Staff Cogan noted the upcoming review of the El Camino Real/Downtown specific plan being presented to City Council at the upcoming meeting.

**F2. Commissioner reports**

Merriman reported on upcoming events for affordable housing week.

**F3. Staff updates and announcements**

Staff Cogan updated the commission on upcoming City Council agenda items.

**H. Adjournment**

Chair Tate adjourned the meeting at 8:28 p.m.



## STAFF REPORT

### Housing Commission

Meeting Date:

5/9/2018

Staff Report Number:

18-009-HC

### Regular Business:

Consider recommending City Council approve updates to the Below Market Rate Housing Program Guidelines.

## Recommendation

Staff recommends that the Housing Commission recommend the City Council update the Below Market Rate Housing Program Guidelines.

## Policy Issues

The City of Menlo Park Housing Element Program H4.C calls for the City to modify the Below Market Rate Housing Program Guidelines ("BMR Guidelines").

## Background

The 2015-2023 City of Menlo Park Housing Element was adopted by the City Council on April 1, 2014. The Housing Element included in the General Plan establishes housing objectives, policies and programs in response to community housing conditions and needs. The City of Menlo Park Housing Element Program H4.C calls for the City to modify the BMR Guidelines.

The first set of updates to the BMR Guidelines related to re-instating the City's inclusionary rental housing program in light of recent State law changes was recently adopted by the City Council, upon the Housing Commission's and Planning Commission's recommendations.

Additionally, in 2017, the Housing Commission formed a BMR Guidelines subcommittee to review the BMR Guidelines and recommend updates to the City Council. The BMR subcommittee met with City staff, Hello Housing staff and the City Attorney's office to discuss a series of recommended changes. This second set of updates to the BMR Guidelines, as discussed in this staff report, accomplish the following: (1) modernizes the definitions of household to reflect more inclusiveness; (2) addresses how to handle over-income tenants; (3) aligns City BMR household income and maximum rent limits with San Mateo County's; (4) codifies the City's current practice of maintaining a BMR rental eligibility list and (5) addresses displaced tenants.

In the near future, staff also expects to work with the subcommittee on a third set of modifications, including the City Council's most recent request to review and update the BMR fees.

## Analysis

### Definition of Household

The City's definition of household has not been updated for quite some time. At a minimum, the City must comply with federal and state laws aimed at preventing housing discrimination. The Department of Housing

and Urban Development (HUD) defines “household” to mean:

All the people who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

[https://www.huduser.gov/portal/glossary/glossary\\_all.html#h](https://www.huduser.gov/portal/glossary/glossary_all.html#h)

This broad definition recognizes that households can take many forms and are not always limited to related family members. The update incorporates HUD’s definition of household into the BMR Guidelines. (Section 6.1.1.)

While recognizing households can take a number of different forms, many agencies impose reasonable joint residency requirements to ensure that persons listed on an application are in fact a true household and will continue to live together as such. Menlo Park’s BMR Guidelines currently require all household members to have lived together for one year prior to the date of application. At the subcommittee’s suggestion, the BMR Guidelines have been updated to exempt from this one-year joint residency requirement new household members added by domestic partnership, adoption or aging family members. In addition, the BMR Guidelines give the City the ability to waive this requirement in other appropriate circumstances. (Section 6.3.1.) At the subcommittee’s suggestion, the BMR Guidelines have been revised to permit unhoused persons to qualify for a Menlo Park residency preference if they can demonstrate their last permanent residence was located in Menlo Park or that they currently reside in Menlo Park as documented by a case manager or homeless services provider. (Section 7.1.) This criteria for determining local residency for unhoused persons has been effectively applied in Sunnyvale.

#### Over-Income Tenant

From time to time, BMR tenants who are income qualified at the time of the initial lease agreement, receive additional income (i.e. job promotion) which eliminates eligibility. Under the current BMR Guidelines, if a tenant remained over income for more than two years, the owner would be required to terminate the lease and re-lease the unit to an income qualifying tenant. To avoid this harsh remedy, the City’s BMR agreement instead provides that the tenant may remain on site (as a market rate tenant), but that the next available unit be rented and designated as a BMR unit. The subcommittee discussed these two different approaches and recommended that the BMR Guidelines be updated to include the same language as contained in the BMR Agreement as follows:

A qualified BMR tenant shall continue to qualify unless at the time of recertification, for two consecutive years, the household’s income exceeds the eligibility requirements, then the tenant shall no longer be qualified. Upon the owner’s determination that any such household is no longer qualified, the unit shall no longer be deemed a BMR Unit, and the owner shall make the next available unit, which is comparable in terms of size, features and number of bedrooms, a BMR (the “Next Available Unit Requirement”), or take other actions as may be necessary to ensure that the total required number of units are rented to qualifying BMR households. The owner shall notify the City annually if it substitutes a different unit for one of the designated BMR Units pursuant to this paragraph.

(Section 11.1.7.)

#### Household Income and Maximum Monthly Rents



Historically, the City of Menlo Park's BMR Program has been geared towards low income households defined as 60-80% of the Area Median Income (AMI). The City Council recently amended the BMR Guidelines to allow for a mix of different affordability levels if approved by Council. In addition, the BMR Guidelines subcommittee recommended additional changes to the affordability requirements. First, they recommended the "moderate income" limit be increased from 110% AMI to 120% AMI to better correspond with the County of San Mateo and HUD's threshold. (Table A) They also recommended the maximum rent table be updated to better align with the County's table. (Table B) The two differences between the City and County tables is the County rent limits do not include utilities (whereas the City's does) and the the tables include slightly different occupancy assumptions. The updated Table B now reflects the maximum rent levels specified by the County.

### *BMR Rental Eligibility List*

At one time, the City maintained both a BMR ownership and BMR rental waiting list ranked by application date. The City still maintains a BMR ownership list (currently maintained by Hello Housing) but it no longer maintains such a list for rentals. For rentals the City maintains a rental interest list and makes that list available to any owners who request it or are required to consider it pursuant to an affordable housing agreement. The subcommittee expressed an interest in modifying the BMR Guidelines to reflect the City's current practice. Staff has made changes to Sections 7 and 11.1.4 to reflect this current administrative practice. (See Sections 7 and 11.1.4.)

### *Displaced Tenants*

The subcommittee also discussed adding a citywide preference for displaced Belle Haven residents and offering some protection for tenants displaced from Menlo Park due to the recession in 2008. As for the Belle Haven preference, the City Council provided earlier direction that this preference be limited to affordable housing developed in the R-MU district and staff is bringing forward a separate ordinance codifying that policy. As for economic displacement in general, Staff has modified the BMR Guidelines to permit Menlo Park tenants who had resided in the City for at least three years as of 2008 and who were displaced due to economic reasons (i.e. job loss) to be placed on either the BMR rental interest list or BMR ownership waiting list. This provision reads:

A person residing in Menlo Park for at least three consecutive years as of 2008 who was subsequently displaced from such housing shall not be disqualified based on current non-residency, provided they can show their displacement was due to economic conditions beyond their control (such as job loss due to economic downsizing).

(Section 7.1.) Note this provision only applies to the BMR rental interest list.

### **Impact on City Resources**

This update is not anticipated to have an impact on City resources.

### **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 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. Updates to Below Market Rate Program Guidelines

Report prepared by:

Cara E. Silver, Assistant City Attorney

## BELOW MARKET RATE HOUSING PROGRAM GUIDELINES

### **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)
- April 17, 2018 (Resolution No. 6432)
- July XX, 2018 (Resolution No. XXXX)



# 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 BMR Housing Program is governed by Chapter 16.96 of the Municipal Code. The BMR Housing Program is administered under these BMR 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 BMR 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 an Affordability Housing Agreement (either, a "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 Housing Commission, Planning Commission and, if applicable, the City Council. ~~The City Attorney must approve as to form the BMR Housing Agreement prior to its review by the Planning Commission.~~
- 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 BMR 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 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 BMR housing on-site (if allowed by zoning) or off-site (if on-site BMR units are infeasible). A density bonus of up to 15% above the density otherwise allowed by zoning may be permitted when BMR 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 Commercial In-lieu Fee Rates, which may be updated by City staff from time to time.

**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 10,000 square feet; and
- (d) Projects that generate few or no employees.

**3.2 Residential Developments.** The BMR 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 [Housing](#) 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 or more units are subject to the requirements of the BMR Housing Program. These requirements also apply to condominium conversions of five units or more. As part of the application for a residential development of five or more units, the developer must submit a BMR Housing Agreement, in a form substantially similar to that provided by the City, which details the developer's plan for participation in the BMR Housing 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 Housing 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 Housing 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 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 units or more are required to participate in the BMR Housing Program. The preferred BMR Housing 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 BMR Guidelines.

For ownership residential development projects, if providing on-site BMR units 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 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 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 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 BMR requirement of 15% equates to 3.75 units. The preferred BMR Housing Program participation is four BMR units. If four BMR units are provided, the developer would*

*pay no in-lieu fee. Alternatively, if three BMR units are provided, the developer would have to pay an in-lieu fee for the remaining fractional BMR unit.*

#### **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 for extremely low (30% AMI), very low (50% AMI), subsidized low (60% AMI), low (80% AMI) or moderate (1240% AMI) income households is based on what is affordable to households with incomes at the identified percentage of area median income ("AMI") 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, which may be updated by City staff from time to time.

**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 the applicable income limits for extremely low, very low, subsidized low, low and moderate income households adjusted for occupancy, [as established from time to time by the HCD for San Mateo County](#). In no case shall the monthly rental amounts for BMR units exceed seventy-five percent (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, which may be updated by City staff from time to time. See also Sections 11.1.1 and 11.1.2.

~~For purposes of these BMR Guidelines, monthly housing cost means the total of monthly payments actually made by the household for (a) use and occupancy of each BMR unit and land and facilities associated therewith, (b) any separately charged fees or service charges which are required of all households, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, and which are not paid directly by the household, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity.~~

The purchase or rental price for BMR units shall be established and agreed upon in writing in the BMR Housing Agreement per Section 2.2, prior to final building inspection for such BMR units. The provision of affordable units at extremely low, very low, low and/or moderate income levels shall be roughly equivalent to the provision of all of the affordable units at the low income level.

**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 developer's 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 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 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 to nine 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.

Unit No.

In lieu fee for each unit

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 seven 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 one percent (1%) of the sales price, three units to pay in-lieu fees of two percent (2%) of their sales prices and one unit to pay three percent (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 three percent (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 10 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.** The City Council shall establish a rental residential in-lieu fee by resolution, which fee may be updated from time to time. The fee shall be based on the cost to develop, design, construct, and maintain a standard one-bedroom unit in Menlo Park. The fee shall also include the proportionate costs of associated common area as well as land acquisition costs. The fee shall be adjusted on a project-by-project basis depending on size, location and other factors relevant to cost. The fee can be adjusted by a pre-set formula or by a consultant selected by the City and funded by the applicant.

## **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.

unless otherwise approved by the City Council for a project that proposes more than 15 percent of the total units as affordable, 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 10 units with one 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 10 or more units, including developments that are constructed in phases, for the first 10 housing units, a BMR unit must pass final inspection before nine market rate units may pass final inspection. For each additional group of 10 housing units, one additional BMR unit must pass final inspection before nine additional market rate units may pass final inspection.

**Twenty (20) or More Units.** In developments of 20 or more units, including developments that are constructed in phases, for the first 10 housing units, a BMR unit must pass final inspection before nine market rate units may pass final inspection. In addition, two additional BMR units must pass final inspection before eight additional market rate units may pass final inspection. For each additional group of 20 housing units, three additional BMR units must pass final inspection before 17 additional market rate units may pass final inspection. No project or phase may pass final inspection unless all the BMR units, which equal 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 which may be updated by City staff from time to time. 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 ("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.

**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 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 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 Purchase 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 all persons who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

~~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 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 20 hours per week and (2) must have continuously worked in Menlo Park for a minimum of one 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 year; or (4) commission work, up to and including a 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 year prior to the date of application.

**6.3.1 Exceptions.** Exceptions to this minimum one 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 or adopted into a household.
- Households newly formed as a result of marriage or domestic partnership.
- Other circumstances approved by the City to account for a recently added household member (such as an aging parent).

**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 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).

**6.4.1. Exceptions.** Exceptions to this requirement are:

- Applicants who are current BMR homeowners and are otherwise eligible for the BMR Housing 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 years prior to the date of application own homes as their primary residences more than 50 miles outside Menlo Park city limits, that are otherwise eligible for the BMR Housing 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 Housing 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 Housing 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 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 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 ~~HCD for San Mateo County~~[the State of California Housing and Community Development Department \("HCD"\)](#). Income limits are updated ~~by the State of California 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 ~~12~~<sup>40</sup>% of the 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 income eligibility limits, which may be updated by City staff from time to time.

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 62 years of age, or permanently disabled and unable to work, with assets valued up to two 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 previous years, and that the total annual household income meets the BMR Guidelines.

## **7. BMR PURCHASE WAITING LIST AND FOR RENTAL AND FOR-PURCHASE UNITS BMR RENTAL INTEREST LIST**

**7.1 Waiting List and Interest List Eligibility Requirements.** A numbered waiting list of households eligible for ~~rental and/or for-purchase~~ of BMR units is maintained by the City or the City's designee. In addition, the City maintains an unranked BMR rental interest list. Households are eligible to be placed on the BMR waiting list or BMR rental interest list if they meet the following four 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.
- For purposes of these Guidelines, unhoused persons may show local residency by providing evidence that their last permanent residence was located in Menlo Park and/or documentation from a case manager or homeless services provider demonstrating current residency in Menlo Park, including places or structures other than a bona fide dwelling unit (i.e. vehicle or tent).
- 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, which may be updated by City staff from time to time.

- Except as specified in Section 6.3.1 of these Guidelines, aAll persons included as members of the household currently live together in a residence that is their primary home.
- A person residing in Menlo Park in 2008 who was subsequently displaced from such housing shall not be disqualified based on current lack of residency, provided they can show their displacement was due to economic conditions beyond their control (such as job loss due to economic downsizing).
- 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 and/or the BMR rental interest list, which is neither numbered nor ordered.
- In accordance with Section 6.4, all members of the household must be first time homebuyers for inclusion on the waiting list.

**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 Housing 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 Housing 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 Housing 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 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 Housing Program provider inspects the BMR unit. After approval of the unit, the City or the City's BMR Housing Program provider writes a certifying letter that states the BMR unit meets the BMR Housing 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 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 124% of ~~the San Mateo County AMI ("AMI") related to household size, as established from time to time by HCD for San Mateo County 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, which may be updated by City staff from time to time. 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 Housing 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 Housing Program, including the rights, restrictions, and responsibilities of owning a BMR unit.
- 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 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 months period, and complete said purchase within not more than 60 days following the end of the six 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 Housing 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 (55 years). Occupancy is defined as a minimum stay of 10 months in every 12 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 Housing Program provider first, prior to a refinance or equity line. The City's BMR Housing Program provider 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 Housing Program provider will provide the owner and/or the lender with the current BMR value of the home, in accordance with the formula specified in the Deed Restrictions. Only the City's BMR Housing Program provider can determine the appraised value of a BMR unit and it is the owner's responsibility to inform their lender that the property is a BMR unit. 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 unit that is set by the City's BMR Housing Program provider.

**9.3 Transfers of Title.** Prior to adding an additional person to title or transferring title to the BMR unit, 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~~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 Deed Restrictions. These kinds of transfers must first be reviewed and approved by the City or the BMR Housing Program provider. 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 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 Housing 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 Housing Program, as identified at the time of transfer in the BMR Guidelines.
- The Transferee must sign a new BMR Agreement and Deed Restrictions for the property. This restarts the 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 Housing Program provider, 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 Housing Program provider will state in writing that the 180 day 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 previous 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.** Unless otherwise approved by the Planning Commission or City Council in the BMR Housing Agreement for the proposed project, only households having gross incomes at or below 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), which may be updated by City staff from time to time. Any variation in the affordability mix to assist the City in meeting its Regional Housing Needs Assessment (including very low, low or moderate income households) shall require a finding by the approving body that the mix is roughly equivalent to the provision of all of the affordable units at the low income level.

**11.1.2 BMR Rent.** BMR units may be rented for monthly amounts not exceeding thirty percent (30%) of the income limit for extremely low, very low, subsidized low, low or moderate income households adjusted for occupancy, as established from time to time by the HCD for San Mateo County. ~~The number of occupants used to calculate the maximum monthly housing cost limits for BMR rental units will be the minimum occupancy for the unit size as identified in Table C.~~ In no case shall the monthly rental amounts for BMR units 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), which may be updated by City staff from time to time. BMR rents may be adjusted from time to time to reflect any changes to the then current Income limits.

~~For purposes of these BMR Guidelines, monthly housing cost means the total of monthly payments actually made by the household for (a) use and occupancy of each BMR unit and land and facilities associated therewith, (b) any separately charged fees or service charges which are required of all households, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, and which are not paid directly by the household, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity.~~

**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 as defined in Sections 6.2 and 7.1 of these

~~Guidelines. During the 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 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 Rental InterestWaiting List.** The qualifications of BMR rental tenants as described in Section 7.1, above, will be independently verified by the ~~owner-City or its designee~~. The City of Menlo Park or the City's designee shall maintain a BMR rental the waiting list for BMR rental units and shall make it available to any owner upon request.

**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 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 BMR Guidelines and the BMR Housing Agreement for the unit.

**11.1.7 Annual Recertification of BMR Units.** The City of Menlo Park or the City's BMR Housing Program provider will recertify annually, by procedures to be established in the BMR Housing 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 BMR 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 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.~~ A qualified BMR tenant shall continue to qualify unless at the time of recertification, for two consecutive years, the household's income exceeds the eligibility requirements, then the tenant shall no longer be qualified. Upon the owner's determination that any such household is no longer qualified, the unit shall no longer be deemed a BMR Unit, and the owner shall make the next available unit, which is comparable in terms of size, features and number of bedrooms, a BMR (the "Next Available Unit Requirement"), or take other actions as may be necessary to ensure that the total required number of units are rented to qualifying BMR households. The

owner shall notify the City annually if it substitutes a different unit for one of the designated BMR Units pursuant to this paragraph.

**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 reasonably equivalent alternatives to these BMR 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~~ Guidelines shall be approved by the City ~~Council~~ Council ~~writing~~ and shall contain findings that the alternative is commensurate with the applicable ~~guideline~~ requirement(s) in the BMR Guidelines and is consistent with the goals of the BMR Guidelines.

## **13. BELOW MARKET RATE HOUSING FUND ~~(“BMR FUND”)~~ AND SEVERABILITY CLAUSE**

**13.1 Purpose.** The City of Menlo Park ~~BMR~~ Below Market Rate Housing Fund ~~(“BMR 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 Housing Fund is generated by such income as in-lieu fees. All monies contributed to the BMR Housing 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 Housing 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 Housing 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 Housing 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 Housing 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 Housing 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 BMR 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 BMR 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 BMR Guidelines, and the BMR 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 City 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>Extremely Low (30% AMI)</i>	<i>Very Low (50% AMI)</i>	<i>City Subsidized Low (60% AMI)</i>	<i>Low (80% AMI)</i>	<i>Area Median Income (100% AMI)</i>	<i>Moderate (120% AMI)</i>
1	27,650	46,100	55,320	73,750	80,700	<del>96,850</del> 88,770
2	31,600	52,650	63,180	84,300	92,250	<del>110,700</del> 101,475
3	35,550	59,250	71,100	94,850	103,750	<del>124,500</del> 114,125
4	39,500	65,800	78,960	105,350	115,300	<del>138,350</del> 126,830
5	42,700	71,100	85,320	113,800	124,500	<del>149,400</del> 136,950
6	45,850	76,350	91,620	122,250	133,750	<del>160,500</del> 147,125
7	49,000	81,600	97,920	130,650	142,950	<del>171,550</del> 157,245
8	52,150	86,900	104,280	139,100	152,200	<del>182,600</del> 167,420

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 Affordable Rent Payment\***

<i>Unit Size</i>	<i>Extremely Low (30% AMI)</i>	<i>Very Low (50% AMI)</i>	<i>City Subsidized Low (60% AMI)</i>	<i>Low (80% AMI)</i>	<i>Area Median Income (100% AMI)</i>	<i>Moderate Income (110% AMI)</i>
Studio***	605***	1,008	1,210	1,613	1,765	1,942
1	691	1,153	1,383	1,844	2,018	2,219
2	790	1,316	1,580	2,108	2,306	2,537
3	889	1,481	1,778	2,371	2,594	2,853
4	988	1,645	1,974	2,634	2,883	3,171

<i>Unit Size</i>	<i>Extremely Low (30% AMI)</i>	<i>Very Low (50% AMI)</i>	<i>City Subsidized Low (60% AMI)</i>	<i>Low (80% AMI)***</i>	<i>Area Median Income (100% AMI)</i>	<i>Moderate Income (120% AMI)***</i>
Studio**	691	1,152	1,479	1,844	2,304	2,421
1	740	1,234	1,586	1,976	2,468	2,594
2	888	1,481	1,904	2,371	2,962	3,113
3	1,026	1,711	2,192	2,739	3,422	3,597
4	1,145	1,908	2,425	3,056	3,816	4,013

Source:

<https://housing.smcgov.org/sites/housing.smcgov.org/files/2017%20Income%20and%20Rent%2006%2019%2017.pdf>

\* Monthly housing cost means the total of monthly payments actually made by the household for (a) use and occupancy of each BMR unit and land and facilities associated therewith, (b) any separately charged fees or service charges which are required of all households, other than security deposits, (c) a reasonable allowance for an adequate level of service of utilities not included in (a) or (b) above, and which are not paid directly by the household, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuels, but not including telephone service, and (d) possessory interest, taxes or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity.

\*\*Maximum affordable rent based on monthly housing cost limit for rental units calculated by taking 30% of the annual monthly income and all utilities paid by landlord unless further adjusted by HUD. Utility allowances for tenant-paid utilities may be established by Housing Authority of County of San Mateo Section 8 Program limit for each income category based on number of occupants which is determined based upon the minimum number of persons per unit identified in Table C and dividing by twelve (12) monthly.

\*\*\*The following is the assumed family size for each unit: Studio: 1 person; and one-bedroom: 1.5 persons; two-bedroom: 3 persons; three-bedroom: 4.5 persons; four-bedroom: 6 persons—units both have a minimum occupancy of one individual. To adjust for unit size, the housing cost limit for a studio is reduced by twelve and one-half percent (12.5%) from the one-bedroom.

\*\*\*In 2017, HCD for San Mateo County did not provide a maximum rent for low or moderate income households. The maximum rent in the table is 30% of annual income divided by 12

months, rounded to the nearest whole number. With respect to a one-bedroom unit with 1.5 persons occupying, the income limit is determined by adding the income for a one person household plus the income for a two person household and dividing by two. With respect to a three-bedroom unit with 4.5 persons occupying, the income limit is determined by adding the income for a four person household plus the income for a five person household and dividing by two.

**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

household plus the income for a five person household and dividing by two.

\*\*\*\*All numbers in the chart are rounded to the nearest whole number.

Note: ~~Smallest household size for purposes of determining the maximum rental amount shall be one 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 person per bedroom, plus one.

**Table D**  
**Commercial In-Lieu Fees for 2017-18**

<b>Group A</b> uses are Research & Development and Office.	Fee: \$16.90 per square foot of gross floor area.
<b>Group B</b> uses are all other Commercial Uses not in Group A.	Fee: \$9.17 per square foot of gross floor area.

Commercial In-Lieu Fees are adjusted annually on July 1.



## STAFF REPORT

### Housing Commission

**Meeting Date:**

**5/9/2018**

**Staff Report Number:**

**18-010-HC**

### Regular Business:

Consider and recommend that the City Council approve the addition of Chapter 8.54 [Tenant Anti-Discrimination] to the City's Municipal Code.

### Recommendation

Staff recommends that the Housing Commission recommend the City Council adopt an ordinance that prohibits discrimination based on the source of a person's income or the use of rental subsidies, including Section 8 vouchers.

### Policy Issues

The City of Menlo Park Housing Element Program H1.G (Adopt an Anti-Discrimination Ordinance) calls for the City to adopt an anti-discrimination ordinance to prohibit discrimination based on the source of a person's income or the use of rental subsidies, including Section 8 and other rental programs.

### Background

The 2015-2023 City of Menlo Park Housing Element was adopted by the City Council on April 1, 2014. The Housing Element included in the General Plan establishes housing objectives, policies and programs in response to community housing conditions and needs. The City's Housing Element was prepared to respond to current and near-term future housing needs in Menlo Park and also to provide a framework for the community's longer-term approach to addressing its housing needs. The Housing Element contains goals, updated information and strategic directions (policies and implementing actions) that the City is committed to undertaking. One of those implementing actions that the City is committed to undertake is H.1.G – to adopt an anti-discrimination ordinance to prohibit discrimination based on the source of a person's income or the use of rental subsidies, including Section 8 and other rental programs.

### Analysis

Housing vouchers were initially championed as an efficient way of subsidizing decent, safe and sanitary housing for low income households. More recently, vouchers have come to be seen as a tool for promoting economic and racial and ethnic integration. The advantages of vouchers depend on the ability of a voucher recipient to locate a landlord willing to accept the voucher. Some landlords wish to avoid the administrative burden associated with the voucher program. Other landlords perceive voucher recipients to be undesirable tenants and/or fear their other tenants would object to voucher recipients as neighbors. This type of discrimination based on source of income hinders the use of vouchers and decreases the efficacy of the program. State and local anti-discrimination laws are one policy response to address this issue. Source of income laws make it illegal for landlords to discriminate against voucher recipients solely on the bases of their source of income for rental payments.

Research has found that source of income laws have the potential to make a substantial difference in voucher utilization rates and a modest difference in locational outcomes.<sup>1</sup> Neighborhoods with source of income laws in place show improved utilization rates and better locational outcomes. Utilization rates increased in the jurisdictions with source of income laws in place in comparison to those without such laws. Thus, policy makers can expect an increase in utilization rates and, for some, greater access to less disadvantaged areas. Given the dearth of affordable housing options in many communities, this is not insignificant.

In San Mateo County, the Section 8 voucher program is administered by the San Mateo County Housing Authority. The Housing Authority reportedly assists approximately 4,300 low-income families in San Mateo County with Section 8 vouchers. Once someone has been approved for the program, it is their responsibility to find housing where the landlord agrees to participate in the program. The unit must meet minimum standards of health and safety and be inspected by the administering agency. The unit can be a house, townhouse, condo or apartment. The tenant pays 30% of their income toward the rent and the housing subsidy pays the balance. The subsidy is paid to the landlord directly by the Housing Authority on behalf of the participating tenant. Landlords who participate in the program receive the same rent as market rent for the unit. The Section 8 program does not require the landlord to accept a lower rent.

The proposed ordinance establishes a right of tenants to be free from discrimination based on their use of a rental subsidy, including Section 8 vouchers. The ordinance would prohibit discrimination based on the source of income, wholly or partially, in any real property transaction, including rental of a unit. The ordinance authorizes any aggrieved person enforce the anti-discrimination ordinance, and after requesting mediation, to file a civil action. The City has no responsibility or liability to enforce the anti-discrimination ordinance.

### **Impact on City Resources**

This ordinance is not anticipated to have an impact on City resources.

### **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 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 72 hours prior to the meeting.

### **Attachments**

- A. Ordinance Adding Chapter 8.54, Tenant Anti-Discrimination

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<sup>1</sup> *The Impact of Source of Income Laws on Voucher Utilization and Locational Outcomes*, U.S. Department of Housing and Urban Development, Office of Policy Development and Research.



Staff Report #: 18-010-HC

Report prepared by:

Leigh F. Prince  
Assistant City Attorney

## Attachment A

ORDINANCE NUMBER \_\_\_\_\_

### **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ADDING CHAPTER 8.54 [TENANT ANTI-DISCRIMINATION] TO TITLE 8 [PEACE SAFETY AND MORALS] 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. The opportunity to seek, obtain and hold housing without discrimination is a civil right. The City of Menlo Park desires to eliminate discrimination in a person's ability to obtain housing based on a person's source of income for rental payments.
- B. The U.S. Department of Housing and Urban Development reports that some landlords avoid the administrative burden associated with voucher programs and other landlords resist renting to voucher recipients because they perceive this group to be undesirable tenants and/or they fear that other tenants would object to voucher recipients as neighbors. This type of discrimination based on the source of income prevents a voucher program from living up to its full potential.
- C. The San Mateo County Housing Authority reportedly assists approximately 4,300 low-income families in San Mateo County with Section 8 vouchers. The success of this program depends on the voluntary participation of landlords to rent to participant families, which include elderly persons, disabled persons, and working families who do not earn enough to keep pace with rising rental housing costs.
- D. Source of income anti-discrimination ordinances have the potential to increase the number of individuals and families who are able to successfully locate housing using a voucher.
- E. The City of Menlo Park Housing Element Program H1.G calls for the City to adopt and the City Council of the City of Menlo Park now wishes to adopt an anti-discrimination ordinance to prohibit discrimination based on the source of a person's income or the use of rental subsidies, including Section 8 and other rental programs.

**SECTION 2. ADDITION OF CODE.** Chapter 8.54 [Tenant Anti-Discrimination] is hereby added to Title 8 [Peace Safety and Morals] of the Menlo Park Municipal Code to read as follows:

#### **Chapter: 8.54 TENANT ANTI-DISCRIMINATION**

- 8.54.010 Purpose and Findings**
- 8.54.020 Definitions**

**8.54.030 Source of Income Protections****8.54.040 Civil Liability****8.54.050 Criminal Penalty****8.54.060 City Liability****8.54.010 Purpose and Findings**

- A. Equal housing opportunities should be available to all people. The City is opposed to and desires to eliminate discrimination in a person's ability to obtain housing based on a person's source of income.
- B. The purpose of this chapter is to establish a right of tenants to be free from discrimination based on their use of a rental subsidy, including Section 8 and other rental programs.

**8.54.020 Definitions**

- A. For purposes of this chapter, "source of income" means all lawful sources of income or rental assistance program, homeless assistance program, security deposit assistance program or housing subsidy program.
- B. The word "person" as used in this chapter means any individual, firm, corporation or other organization or group of persons however organized.

**8.54.030 Source of Income Protections**

- A. It is unlawful for any person to do any of the following wholly or partially based on the source of income:
  - 1. To interrupt, terminate, fail or refuse to initiate or conduct any transaction in real property, including, but not limited to, the rental thereof;
  - 2. To require different terms for such transaction;
  - 3. To falsely represent that an interest in real property is not available for such transaction;
  - 4. To refuse or restrict facilities, services, repairs or improvements for any tenant or lessee;
  - 5. To make, print, publish, advertise or disseminate in any way, or cause to be made, printed or published, advertised or disseminated in any way, any notice, statement, or advertisement with respect to a transaction in real property or with respect to financing related to any such transaction, which unlawfully indicates preference, limitation or discrimination based on source of income.
- B. It is unlawful for any person to use a financial or income standard for the rental of housing that does either of the following:
  - 1. Fails to account for any rental payments or portions of rental payments that will be made by other individuals or organizations on the same basis

as rental payments to be made directly by the tenant or prospective tenant;

2. Fails to account for the aggregate income of persons residing together or proposing to reside together or an aggregate income of tenants or prospective tenants and their cosigners or proposed cosigners on the same basis as the aggregate income of married persons residing together or proposing to reside together.

C. Exceptions.

1. Nothing in this chapter shall be construed to apply to the rental or leasing of any housing unit in which the owner or any member of his/her family occupies one of the living units or the structure contains fewer than four dwelling units.
2. Nothing in this chapter shall be deemed to permit any rental or occupancy of any dwelling unit or commercial space otherwise prohibited by law.

**8.54.040 Civil Liability**

- A. Any aggrieved person may enforce the provisions of this chapter by means of a civil action for damages and injunctive relief in any court of competent jurisdiction. The litigating complainant shall file a courtesy copy of the lawsuit with the City Attorney.
- B. Prior to filing a civil action, a person whose rights have allegedly been violated under this chapter shall first request to mediate the controversy. The complainant's obligations under this section shall be satisfied if the parties mediate in good faith or if the opposing part does not agree to mediation within 14 days of the request to mediate.

**8.54.050 Criminal Penalty**

Any person who violates any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment in the county jail for a period not exceeding six months, or both.

**8.54.060 City Liability**

- A. The City shall not be liable for any damages, costs or expenses which are the result of any act or omission of or any decision made by any person (e.g. mediator, court) concerning an anti-discrimination claim or a complainant's assertions pertaining to rights granted or conferred by this chapter.
- B. Under no circumstances shall the City have any responsibility or liability to enforce this chapter or to seek legal redress.

SECTION 3. 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 4. 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") because the activity is not a project as defined by Section 15378 of the CEQA Guidelines. The ordinance has no potential for resulting in physical change to the environment either directly or indirectly.

SECTION 5. 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:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

\_\_\_\_\_  
Peter I. Ohtaki  
Mayor

ATTEST:

\_\_\_\_\_  
Judi Herren  
City Clerk