

RESOLUTION NO. 6884

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK
ADOPTING REVISIONS TO THE BELOW MARKET RATE HOUSING
PROGRAM GUIDELINES**

WHEREAS, the City of Menlo Park (“City”) adopted Chapter 16.96 of the Menlo Park Municipal Code to authorize a below market rate housing program to increase the housing supply for households that have very low, low and moderate incomes compared to the median household income for San Mateo County (“Below Market Rate Housing Program”);

WHEREAS, the City established the Below Market Rate Housing Program Guidelines (“Guidelines”) to implement the Below Market Rate Housing Program on the twelfth day of January, 1988; and

WHEREAS, there remains a need to facilitate affordable housing opportunities for extremely low, very low, low and moderate-income households in Menlo Park; and

WHEREAS, the City strives to continue improving the implementation of the Below Market Rate Housing Program with continued updates to the Guidelines; and

WHEREAS, the City affirms its commitment to providing affordable housing opportunities to income-qualifying households; and

WHEREAS, the proposed modifications to the Guidelines ensure the City is proactively improving current practices for its affordable housing programs by outlining clearer requirements and deadlines for calculating the sales prices for for-sale affordable housing units, soliciting and reviewing applications from income-qualifying households, and carrying out the purchase and sale transaction between the seller and the selected income qualified buyer; and

WHEREAS, the Housing Commission reviewed and recommended the City Council adopt the proposed changes to the Guidelines at its meeting on the twenty-seventh day of November, 2023; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Menlo Park hereby adopts the revised Below Market Rate Housing Program Guidelines, attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, BE IT FURTHER RESOLVED that any prior versions of the Below Market Rate Housing Program are hereby superseded and shall have no further force and effect from this date forward.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council resolution was duly and regularly passed and adopted at a meeting by said City Council on the fifth day of December 2023, by the following votes:

AYES: Combs, Doerr, Nash, Taylor, Wolosin

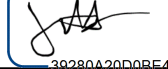
NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this eighth day of December, 2023.

DocuSigned by:



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Judi A. Herren, City Clerk

Exhibits:

A. Below Market Rate Housing Program Guidelines

CITY OF MENLO PARK BELOW MARKET RATE HOUSING PROGRAM GUIDELINES

Section 14 Tables Updated for 2023

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)
- June 19, 2018 (Resolution No. 6446)
- March 1, 2022 (Resolution No. 0000)

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.

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, the applicant for any project described in Section 3 below ("Project Applicant") 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 Project Applicant'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, and, if applicable, to the Planning Commission and/or the City Council. The City Attorney must approve as to form the BMR Housing Agreement prior to its review by the Planning Commission.
- The City Council grants approval of the BMR Housing Agreement for projects which it reviews. For all other projects, the BMR Housing Agreement shall be approved by the entity having final approval authority over the project.

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 Project Applicant 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 Project Applicant must submit a BMR Housing Agreement, in a form substantially similar to that provided by the City, which details the Project Applicant'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 Project 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, Project Applicants 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. Project Applicants are exempt from the requirements of the BMR Housing Program.

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

Ten (10) to Nineteen (19) Units. The Project Applicant 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 Project Applicant 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 Project Applicant 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 Project Applicant would pay no in-lieu fee. Alternatively, if three BMR units are provided, the Project Applicant 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 (120% AMI) income households (each, an "Income Category") is based on what is affordable to households with incomes at the identified percentage of area median income ("AMI") for that Income Category 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. The timing and formula for the sales price calculation is further detailed in Section 5.4 and 9.1.

- 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.

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 Project Applicant 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, Project Applicants 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 Project Applicant 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 Project Applicant shall be responsible for correcting, at Project Applicant'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 Project Applicant 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 Project Applicant 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 Project Applicant 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 Project Applicant 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 Project Applicant cannot provide an additional BMR unit. If providing an additional BMR unit is not feasible, Project Applicants are required to pay a residential in lieu fee as described below.

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

Example: In a development of 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 Project Applicant 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 Project Applicant 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 Project Applicant 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 Project Applicant and paid for by the Project Applicant. 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 Project 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, 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. Prior to issuing any building permit for (a) new construction and (b) condominium conversions that require an inspection for the temporary certificate of occupancy or final certificate of occupancy, whichever comes first ("Building Inspection"), City shall determine for each BMR Unit that the Project Applicant's plans submitted as part of a complete building permit application demonstrate that these requirements will be met when the work contemplated by the plans is completed and confirm that the BMR unit has been

constructed pursuant to the plans during the Building Inspection. For condominium conversions that do not require Building Inspection or units in projects described in Section 5.4.1, City shall inspect the unit within sixty (60) days of City's receipt of the Project Applicant's notice of intent to sell described in Section 9.1.2 to confirm that these requirements are met.

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. City shall determine that the Project Applicant's plans submitted as part of a complete building permit application demonstrate that these requirements will be met when the work contemplated by the plans is completed and City shall confirm that these requirements have been met during the Building Inspection. For condominium conversions that do not require Building Inspection or units in projects described in Section 5.4.1, City shall inspect the unit within sixty (60) days of City's receipt of the Project Applicant's notice of intent to sell described in Section 9.1.2 to confirm that these requirements are met.

5.3 The BMR Price Must Be Set Before Building Inspection. There shall be no Building Inspection of a for-sale BMR housing unit until its Maximum Sales Price or monthly rental amount has been established by the City. Also, the sale or rental process will not begin until the Maximum Sales Price or monthly rental amount for the BMR housing unit is set.

5.3.1 Building 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 Building Inspection before the last market rate unit passes Building 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 Building Inspection before nine market rate units may pass final inspection. For each additional group of 10 housing units, one additional BMR unit must pass Building 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 Building Inspection before nine market rate units may pass Building Inspection. In addition, two additional BMR units must pass Building 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 Building Inspection before 17 additional market rate units may pass Building Inspection. No project or phase may pass Building Inspection unless all the BMR units, which equal 15% or more of the housing units in that phase or project, have passed Building Inspection for that phase or project.

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

5.4 Maximum Sales Price for BMR For-Sale Units; Transaction Costs. The "Maximum Sales Price" will be calculated according to a formula designed to ensure that BMR units remain affordable. The formula is based on the required income limits for the particular BMR unit and the minimum household size eligible for the BMR unit as shown on Table C. The formula takes into consideration mortgage interest rates, minimum down payments, and other qualifying criteria used by lenders at the time the Maximum Sales Price is set, as well as cost of insurance, taxes, homeowners' dues, utilities, and any other necessary costs of

homeownership capped at a specified percentage of household income. The formula is further described in Section 9.1.4 and the Maximum Sales Price may be adjusted in the event of changes in interest rates, as further detailed in Section 9.1.

Owners of for-sale units are not guaranteed that a new buyer will purchase the unit at the Maximum Sales Price. As in any real estate transaction, owners of for-sale units may have to lower the price in order to attract a buyer. Owners with deferred maintenance or excessive wear and tear should expect to negotiate a lower sales price or agree to repairs as a condition of sale. The Maximum Sales Price is simply the maximum amount that owners of for-sale units may advertise and sell a BMR unit for.

The net proceeds from the sale will also be less than the Maximum Sales Price because of the Administration Fee, any commissions, and transaction costs.

The Project Applicant shall be responsible for the cost of a CLTA title policy, documentary transfer tax, and the fee for the escrow agent's services. The BMR Applicant shall be responsible for any costs associated with obtaining a loan for the BMR unit.

The City will designate a BMR administrator to assist with the sales process including the process of marketing new BMR units and resales of BMR units and processing applications from BMR Applicants. City's designee will represent both the BMR Applicant and Project Applicant in the transaction. The Project Applicant shall be responsible for paying the City's designee's fee to administer the sales process and market the BMR unit ("Administration Fee"), which shall not exceed six percent (6%) of the Maximum Sales Price. The Project Applicant, but not the BMR Applicant, may elect to secure their own real estate broker. If the Project Applicant secures their own real estate broker, the Project Applicant shall be responsible for the commission or other fee charged by the Project Applicant's real estate broker in addition to the City's designee's Administration Fee.

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 must have all required City approvals for such arrangement and document such arrangement in the Project's BMR Housing Agreement. The Maximum Sales Price shall be approved in the manner set forth in Section 9.1.4.

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 a sales price computed as described in Section 9.2 of these Guidelines ("**City Purchase Option**"). The deed restrictions will also prohibit sales or transfers of the property except with the written consent of the City and at a sales price computed as described in Section 9.2 of these Guidelines. Exceptions from all prohibitions against sale or transfer are discussed in Section 10.3 and the transfer must satisfy the terms and conditions set forth in Section 10.3.

6. HOUSEHOLD DEFINITION AND CRITERIA

For purposes of sections 7, 8 and 9 of these Guidelines, the following definition of household and provisions establishing household composition shall apply.

6.1 Definition of BMR Applicant. “BMR Applicant” shall mean any person or household (defined below) applying for a BMR unit.

6.2 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. To be considered a household, all proposed 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. If a parent has 50% or more custody of a child, the child shall be counted as one person in the household.

6.3 Household Requirement. To constitute a household, all members of the BMR 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 BMR 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 regarding the addition of a family member over the age of 18 may be reviewed by the City or its designee.

7. ELIGIBILITY REQUIREMENTS FOR HOUSEHOLDS APPLYING TO PURCHASE BMR UNITS

Note: The City no longer maintains a ranked purchase waitlist. Previously ranked households have been transferred to the BMR Purchase Legacy List, as defined and more fully set forth in Section 8.2. The provisions of Sections 7.1 to 7.4 below apply to all households, including the BMR Purchase Legacy List households, at the time of submission of an application to purchase a BMR unit. In order for a household to be eligible at the time of submission of application, all of the following provisions shall apply and/or be met (except that the requirement in Section 7.2 may be met at the time specified in Section 9.1):

7.1 First Time Homebuyer. All members of the BMR Applicant household must be first time homebuyers, defined as not having owned a home as a primary residence within the last three years prior to the date of application. A primary residence is a property occupied by the BMR Applicant household for the majority

of a calendar year. A household may have only one primary residence. First time homebuyers include owners of mobile homes not on a permanent foundation, as well as BMR 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 BMR Applicant's eligible assets).

7.1.1 Exceptions. Exceptions to this requirement are:

- BMR Applicants who are current BMR homeowners and are otherwise eligible for the BMR Housing Program, are eligible to apply for BMR ownership opportunities and to purchase a smaller or larger home needed due to changes in household size or family needs, such as for accessibility needs.
- BMR Applicants whose names were placed on the BMR Purchase Waiting List prior to March 2, 2010.
- BMR 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.

7.2 Complete First Time Pre-Purchase Homebuyer Education. All adult household members, except as provided herein, must complete a one-time homebuyer education workshop, class, or counseling session. Program staff provides households with a list of approved local organizations that provide pre-purchase homebuyer education. BMR 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 BMR 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 BMR Applicants with certificates of completion, typically good for two years, that BMR Applicants can submit to the City's BMR Housing Program provider as proof that the pre-purchase education requirement was completed. Only households that have completed the education requirement will be allowed to purchase BMR units when BMR units become available. Adult parents of BMR Applicants living in the household need not complete the education requirement.

7.2.1 Prior Completion of Pre-Purchase Homebuyer Education. Except as provided in Section 7.2.3 below, BMR Applicants who provide an unexpired certificate of completion for a homebuyer education workshop, class, or counseling session are not required to complete an additional workshop, class, or counseling session.

7.2.2 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.

7.2.3 Long-Term Education or Counseling Required for Certain BMR Applicants. BMR 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. The BMR Applicant must provide evidence of completion of credit counseling before they can be approved to purchase a BMR ownership unit. The credit counseling requirement does not exclude the BMR Applicant from applying to future BMR purchase opportunities.

- 7.3 Ownership Interest.** A minimum of 50% of the ownership interest in the property must be vested in the qualifying BMR Applicant(s), regardless of income.
- 7.4 Income and Asset Limits for Purchasers of BMR Units.** Income eligibility limits are established by HCD for San Mateo County. Income limits are updated 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 the income limit for the Income Category designated in the BMR Housing Agreement, 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 Maximum Sales 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 BMR 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.

7.4.1 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 BMR 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.

8. BMR PURCHASE LEGACY LIST; PREFERENCE CRITERIA

8.1 BMR Purchase Legacy List.

The City no longer maintains a ranked BMR Purchase Waiting List and no longer adds households to this list. To honor households that maintained their place on the BMR Purchase Waiting List and were required to annually recertify, the City created a "BMR Purchase Legacy List." Households on the previous ranked BMR purchase list as of January 1, 2021 were effectively notified and transferred to the BMR Purchase Legacy List, which allows these identified households to have

priority over all other BMR Applicants. Once there are no longer any households remaining on the BMR Purchase Legacy List (either because households on the list have been placed in units pursuant to these Guidelines, or because households have withdrawn from the list), the BMR Purchase Legacy List will be considered terminated. By January 31 of each calendar year, City shall notify each household in writing that the household must respond within thirty (30) days of the date of City's notice to reaffirm the household's interest in remaining on the BMR Purchase Legacy List, inform the City of any increase or decrease in household size, and provide documentation that the household meets the criteria set forth in Sections 7.1 and 7.4 and that a failure to timely respond will result in the household's removal from the BMR Purchase Legacy List. City's written notification shall be provided to the household at the address or email address last provided to City or City's designee by the household. If the household does not timely provide a response with acceptable documentation, the household will be removed from the BMR Purchase Legacy List.

Households on the BMR Purchase Legacy List are not required to meet a preference.

Households on the BMR Purchase Legacy List will be notified when any BMR units become available and reminded that only households within the minimum and maximum household size on table C for the BMR unit size should apply for the BMR unit.

8.2 BMR Preference Criteria and Lottery Process.

If the BMR Purchase Legacy List has been terminated or if there are two (2) or fewer households on the BMR Purchase Legacy List within the minimum and maximum size on Table C for an available BMR unit, income qualified households that are not on the BMR Purchase Legacy List shall apply for available BMR units via a lottery drawing held by the City or the City's designee. BMR Applicants from the BMR Purchase Legacy List that are within the minimum and maximum size set forth on Table C, if any, shall be ranked higher than the BMR Applicants from the lottery drawing and shall be ranked in the order that they appeared on the BMR Purchase Legacy List. The lottery drawing will rank all other BMR Applicants at random followed by a final ranking to account for households meeting the City's preference criteria. All income eligible BMR Applicants that do not qualify under one of the preferences will receive a final lottery rank lower than BMR Applicants meeting preference criteria.

Preference criteria will be utilized at the time of a BMR unit drawing submission and verified during the application process. If a BMR Applicant does not meet a preference or cannot provide sufficient evidence establishing they meet a preference, that BMR Applicant will lose their preference ranking. In no circumstances shall the preference criteria and/or eligibility requirements of these Guidelines be applied in a manner that is contrary to State and/or Federal fair housing laws.

In addition to the below criteria, a tenant of a Menlo Park 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.

Preference criteria are set forth below. All preferences, aside from the accessible unit preference, shall be given the same weight and/or ranking significance in formation of the final lottery ranking list.

Live and/or Work Preference: The BMR Applicant's primary residence is within incorporated Menlo Park or a member of the BMR Applicant household currently works or volunteers within incorporated Menlo Park.

- Criteria for residing within incorporated Menlo Park. To qualify as living in Menlo Park, the BMR Applicant's primary residence must be within incorporated Menlo Park.
- Criteria for working within incorporated Menlo Park. To qualify as a household that works in Menlo Park, a member of the BMR Applicant's household must 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.
 - 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; (4) commission work, up to and including a 100% commission arrangement, conducted in Menlo Park, or (5) volunteering for a community or civic serving entity located within Menlo Park, without receipt of compensation, wages or salary in exchange for such time and work.
 - 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.
 - Owning (either wholly or in part) a residential or commercial property for investment purposes only shall not qualify as working within incorporated Menlo Park.

Unhoused Preference: 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).

Displacement Preference: A BMR Applicant residing within incorporated Menlo Park for three or more years that was subsequently displaced from such housing and does not reside in Menlo Park at the date of submission of application, shall not be disqualified based on current lack of residency, provided they can show their displacement was due to economic conditions beyond their control (including but not limited to job loss, rent increase, eviction, foreclosure or other form of economic hardship resulting in loss of housing). Evidence of such economic displacement shall be in the form of direct evidence (i.e. job termination letter) or declarations submitted under penalty of perjury.

Accessible Unit Preference: If the BMR unit is an accessible unit, then BMR Applicants with a person or persons with accessibility needs who are otherwise eligible for the BMR unit, including by household size and income, will receive preference for units with features serving those accessibility needs ahead of BMR Applicants without an accessibility need. Ranking of BMR Applicants for

accessible units shall follow the below list from highest to lowest in the order of lottery ranking:

- BMR Applicants with a person or persons with an accessibility need meeting an existing Menlo Park preference, such as live and/or work, unhoused or displacement preference.
 - BMR Applicants with a person or person with an accessibility need not meeting an existing Menlo Park preference
 - BMR Applicants meeting an existing Menlo Park preference
 - BMR Applicants not meeting an existing Menlo Park preference
- 8.3 BMR Applicant Financing Rules.** BMR Applicants that finance the purchase of the BMR unit must do so with a 30 year loan, a 3% down payment, and an interest rate that is consistent with Freddie Mac's most recently published Primary Mortgage Market Survey.
- 8.4 Applications.** All applications for a for-sale BMR unit must include supporting documentation to demonstrate that:
- The BMR Applicant meets the criteria set forth in Sections 7.1 and 7.4;
 - The BMR Applicant is pre-qualified for a loan; and
 - If the BMR Applicant is not on the BMR Purchase Legacy List and claims to meet a preference, that the BMR Applicant meets the preference (acceptable documentation is set forth in Section 8.2).

Applications must also include a signed acknowledgement that the BMR Applicant understands and agrees to the condition set forth in section 7.3.

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

9.1 Process for Sale of New Units and Condominium Conversions

Where BMR units are developed as part of new construction or where BMR rental units will be converted to condominiums the following procedures shall apply in the order in which they are set forth, below.

- 9.1.1** For (a) new construction or (b) condominium conversions that will require a Building Inspection, the Project Applicant shall provide written notice to the City's Housing Manager or their designee at least one hundred eighty (180) days prior to the date that the Project Applicant anticipates being ready for a Building Inspection.
- 9.1.2** For (a) condominium conversions where no Building Inspection is required or (b) units in projects described in Section 5.4.1, the Project Applicant shall provide written notice to the City's Housing Manager or their designee at least one hundred eighty (180) days prior to the date that they intend to sell the subject BMR unit(s).
- 9.1.3** Together with the notice in 9.1.1 or 9.1.2, the Project Applicant must provide the amount of any Homeowner's Association dues, estimated property tax figures, and estimated insurance costs for the BMR unit(s). No Building Inspection shall be scheduled or otherwise take place until the Maximum Sales Price for the BMR unit is set.
- 9.1.4** Within 90 days of proper written notification being provided pursuant to section 9.1.1 or section 9.1.2, the City or its designee shall (1) determine income qualifications for the BMR unit(s); and (2) determine the Maximum Sales Price of the BMR unit(s). The Project Applicant or owner shall not influence the determination of Maximum Sales Price, which shall be determined solely based on the following:

- The income limit for the minimum household size for the BMR unit in the Income Category designated in the BMR Housing Agreement, as shown in Table C. City staff may update Table C from time to time to reflect changes made to the household size for a unit from time to time by HCD for San Mateo County. See Section 14, Table A, for income eligibility limits, which may be updated by City staff from time to time.
 - a 3% down payment.
 - The average 4 week interest rate published in Freddie Mac's most recent Primary Mortgage Market Survey.
 - monthly housing costs, insurance costs, utilities, homeowners' association dues, taxes and assessments, not to exceed 30% of the household income amount established based on the above criteria.
- 9.1.5** For (a) new construction or (b) BMR units with condominium conversions that require a Building Inspection, the Project Applicant or owner of the BMR unit(s) must inform the City or its designee in writing that the BMR unit has received its final certificate of occupancy and that the BMR unit is ready for sale and occupancy. "The City" shall mean the City Manager, or his or her designee.
- 9.1.6** City of Menlo Park staff writes a certifying letter that states the BMR unit meets the BMR Housing Program's requirements set forth in Sections 5.1 and 5.2. The certifying letter will also state the Maximum Sales Price for the BMR unit, which may be adjusted from the Maximum Sales Price established under Section 9.1.4 to account for changes in interest rates.

The City will send the certifying letter at the following times:

For (a) new construction or (b) BMR units with condominium conversions that require a Building Inspection, within ten (10) days of City's receipt of notice that the unit received its final certificate of occupancy.

For condominium conversions that do not require a Building Inspection, after the City has 1) inspected the BMR unit and confirmed that the requirements set forth in Sections 5.1 and 5.2 have been met and 2) set the Maximum Sales Price.

For units in projects described in Section 5.4.1, within ten (10) days after the BMR unit has been vacated and City has reinspected the unit to confirm that the unit is in good condition and still meets the requirements of Section 5.1 and 5.2.

- 9.1.7** Within ten (10) days of receipt of the certifying letter, the Project Applicant must provide City or its designee the following:
- (1) a proposed purchase contract that must include the following terms:
 - A forty-five (45) day loan contingency.
 - A thirty (30) day inspection period where the BMR Applicant can inspect the unit and negotiate repairs or modifications with the Project Applicant.
 - The requirement that escrow open within five (5) days of full execution.
 - The requirement that the BMR Applicant provide a deposit within three (3) days of opening escrow.
 - The requirement that escrow close within sixty (60) days of opening escrow.

- (2) Covenants, Conditions and Restrictions applicable to the BMR unit(s),
- (3) any other rules or bylaws established by a Homeowner's Association that governs any condominium complex or planned development in which the BMR unit is located.
- (4) for any development that must provide fewer than five (5) BMR units or any development not required to prepare a marketing plan because the BMR Purchase Legacy List has not been terminated or there are more than two (2) households on the BMR Purchase Legacy List within the minimum and maximum household size for all units the Project Applicant is providing, the Project Applicant must provide for City approval a proposed advertisement to be posted on the City website, which must include photographs of the BMR unit, a diagram showing the location of the BMR unit within the condominium complex or planned development, a floorplan with dimensions of each room, a description of appliances and amenities offered, and a proposed schedule of open houses. The proposed open house schedules must include open houses on weekend days or at times after 6pm on a weekday.
- (5) if the BMR Purchase Legacy List has been terminated or there are fewer than two (2) households on the BMR Purchase Legacy List within the minimum and maximum household size on table C for the size of any BMR unit the Project Applicant is providing, a marketing plan for any development that must provide five (5) or more BMR Units, the plan must include at the least following, unless City approves substitute marketing measures in its reasonable discretion:
 - An advertisement of the BMR Unit to be posted by the City or City's designee on Zillow or Redfin, the City's website, and the City's pages on at least two (2) social media platforms. The listing must include photographs of the BMR unit, a diagram showing the location of the BMR unit within the condominium complex or planned development), a floorplan with dimensions of each room, a description of appliances and amenities offered.
 - Mailing and/or emailing flyers to persons on any interest list that the City maintains or that have submitted an interest form for for-sale BMR units.
 - Holding at least three (3) open houses that must occur on a weekend day or at 6pm or later on weekdays.
 - Internet advertisements *must all include* a statement that applicants who do not meet the income qualifications should not contact the Project Applicant or apply for the City's lottery for the BMR unit.

City shall approve the marketing plan (if applicable) or, if City desires to propose revisions to the marketing plan (if applicable) , hold a meeting with Project Applicant to discuss revisions to the marketing plan within fifteen (15) business days of receipt of the marketing materials from Project Applicant. If the City must hold a meeting with the Project Applicant before approving the materials, the Project Applicant and City

must agree on a final marketing plan (if applicable) within twenty-five (25) business days of City's receipt of the original proposed purchase agreement and original marketing plan.

The Project Applicant must act in good faith and respond in a reasonably timely manner to City staff and City's designee at all times throughout the sales process.

- 9.1.8** 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 BMR Applicant's purchase will be extended until that requisite number of units has closed.
- 9.1.9** Within ten (10) days of City's approval of the marketing plan, the Project Applicant shall implement the marketing plan and (for developments with more than five (5) BMR units) list the BMR unit, and the City shall post the approved advertisement on the approved, designated City social media pages and City website. The City shall also make the following available on its website:
- 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.
 - The name of two (2) City staff persons which includes City hired consultants that BMR Applicants may call or email with questions or, alternatively, a date of a meeting for staff or City's consultant to answer questions about the process.
- 9.1.10** Completed applications are submitted to the City or its designee along with income and asset verifications and a loan prequalification letter. Applications will be accepted for forty-five (45) days.
- 9.1.11** When the application period closes, the City or its designee reviews the completed applications. The complete, eligible, qualifying applications are ranked pursuant to the procedures set forth in Section 8.2. The City will publish the rankings within twenty one (21) days, identifying the BMR Applicants by number assigned to them at the time of their initial application.
- 9.1.12** The highest ranked BMR Applicant will then be notified by the City that they have been selected. The highest ranked BMR Applicant must provide documentation acceptable to the City that they have satisfied Section 7.2 within ten (10) days of the date of City's notification that the BMR Applicant was selected. Within two (2) business days of receipt of the BMR Applicant's documentation and confirming the documentation is acceptable, City shall introduce the highest ranked BMR Applicant to the Project Applicant by email and provide the contract to the highest ranked BMR Applicant. The BMR Applicant must sign the contract or propose revisions within ten (10) days of the introduction. The BMR Applicant should be aware that the Project Applicant's ability to accept revisions may be limited if the purchase agreement was required to be approved by the Department of Real Estate. The Project Applicant must respond to any revisions within five (5) days. If the highest ranked BMR Applicant and Project Applicant do not sign a contract within twenty-one (21) days

of the introduction, the City shall contact the next BMR Applicant on the list. The City may, in its discretion, extend the timelines set forth in this paragraph by a few days if the BMR Applicant and Project Applicant are acting in good faith and are likely to reach agreement.

If a BMR Applicant does not timely provide acceptable documentation that they have satisfied Section 7.2 or enters into a contract with the Project Applicant and thereafter fails to timely open escrow, make a deposit, obtain final loan approval, or close escrow pursuant to these timeframes, the City or its designee will (i) notify the BMR Applicant that the BMR Applicant has forfeited the unit and (ii) contact the next highest ranked BMR Applicant in writing and by telephone to inform them that they have been selected and may enter into a contract with Project Applicant. The next highest ranked BMR Applicant, the Project Applicant, and the City shall follow the procedures of this Section 9.1.12 and the next highest ranked BMR Applicant shall be subject to the same deadlines described above in this Section 9.1.12. The procedures of this Section 9.1.12 will repeat until an eligible BMR Applicant has closed escrow.

The Project Applicant shall negotiate in good faith with the BMR Applicant following City's introduction of the Project Applicant and BMR Applicant. The Project Applicant must respond timely to questions and proposed contract terms posed by BMR Applicants and must respond timely to the escrow agent and provide all documentation reasonably requested by the escrow agent from the Project Applicant to close escrow.

9.1.13 If no applications are received from BMR Applicants that meet the requirements of Sections 7.1 and 7.4 during the forty-five (45) day application period then, within thirty (30) days after the end of the application period, (i) the Maximum Sales Price will be recalculated according to the method set forth in Section 9.1.4 (provided that if the Maximum Sales Price after recalculation is not different than the Maximum Sales Price specified in the certifying letter, the Project Applicant and the City shall agree upon a reasonable price modification to attract qualified BMR Applicants) and (ii) the Project Applicant and City shall agree on any necessary or desirable modifications to the marketing plan. The BMR unit will then be marketed again at the lower of the Maximum Sales Price specified in the certifying letter or the recalculated Maximum Sales Price. If the BMR unit still does not sell, the City shall at its option (i) elect to repeat the process set forth in this Section 9.1.13, or (ii) offer to purchase the unit at a recalculated Maximum Sales Price in accordance with Section 9.1.4.

9.2 Process for Resale of BMR units

Where For-Sale BMR unit(s) are proposed to be resold, the following procedures shall apply in the order in which they are set forth, below.

9.2.1 The owner of the subject For-Sale BMR unit 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 (if the City is the buyer) or qualified buyer 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.

9.2.2 Within 90 days of proper written notification being provided pursuant to section 9.2.1, the City or its designee shall have 1) inspected the BMR unit to confirm it is in salable condition, 2) obtained an appraisal that determines the fair market value of the BMR unit, and 3) computed a sales price of the BMR unit, based on the original selling price of the BMR unit, depreciated value of any substantial improvements made by the seller, and 1/3 of the increase in the cost of living index for the Bay Area. The sales price will be the lower of the appraisal’s conclusion of fair market value or the price computed as described in clause 3.

9.2.3 Following the requirements set forth in sections 9.2.1 and 9.2.2, the owner and City shall follow the procedures commencing with section 9.1.7 and concluding with section 9.1.13 except that there shall be no requirement for a marketing plan and the word “Project Applicant” in section 9.1.7 to 9.1.13 shall be replaced with “owner.”

The owner shall be responsible for the cost of a CLTA title policy, documentary transfer tax, and the fee for the escrow agent’s services. The BMR buyer shall be responsible for any costs associated with obtaining a loan for the BMR unit.

The City may designate a BMR administrator to assist with the process of marketing resales of BMR units and processing applications from BMR buyers. City’s designee will represent both the buyer and seller in the transaction. The seller shall be responsible for paying the City’s designee’s Administration Fee, which shall not exceed six percent (6%) of the Maximum Sales Price. The seller, but not the buyer, may elect to secure their own real estate broker. If the seller secures their own real estate broker, the seller shall be responsible for the commission or other fee charged by the seller’s real estate broker in addition to the City’s designee’s Administration Fee.

10. OCCUPANCY AND TITLE REQUIREMENTS FOR OWNER-OCCUPIED BMR UNITS

10.1 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.

10.2 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 95% combined loan to value of 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.

10.3 Transfers of Title. Prior to adding an additional person to title or transferring title to the BMR unit, including transferring title to a trust, 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 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. The 55 year deed restriction clock would restart when that person takes title. 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 BMR Applicant. 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 concurrently with the transfer of title to the Transferee. This restarts the 55 year clock.

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, or low (or moderate income if approved by the Planning Commission or City Council) 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 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.
- 11.1.3 Tenant Selection and Certification Procedures.** Priority for occupancy of all BMR rental units shall be given to those income eligible households who meet the preference criteria defined in section 8.2 of these Guidelines.
- 11.1.4 Interest List.** The qualifications of BMR rental tenants as described in Section 8.2, above, will be independently verified by the owner. The City of Menlo Park or the City's designee shall maintain a list of households interested in BMR rentals (herein referred to as the "Interest List") and shall make it available to any Project Applicant 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. 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 Project Applicant 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 Project Applicant 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 shall be approved by the City Council and shall contain findings that the alternative is commensurate with the applicable requirement(s) in the BMR Guidelines and is consistent with the goals of the BMR Guidelines.

13. BELOW MARKET RATE HOUSING FUND AND SEVERABILITY CLAUSE

13.1 Purpose. The City of Menlo Park 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

2023 Income Limits

Area Median Income: \$175,000 (for a household of 4 persons) effective June 6, 2023

Income Category	Household Size						
	1	2	3	4	5	6	7
Extremely Low Income	39,150	44,750	50,350	55,900	60,400	64,850	69,350
Very Low Income	65,250	74,600	83,900	93,200	100,700	108,150	115,600
Low Income	104,400	119,300	134,200	149,100	161,050	173,000	184,900
Median Income	122,500	140,000	157,500	175,000	189,000	203,000	217,000
Moderate Income	147,000	168,000	189,000	210,000	226,800	243,600	260,400

www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf

Table B

Maximum Affordable Rent Payment

2023 Rent Limits

Area Median Income: \$175,000 (for a household of 4 persons) effective June 6, 2023

Maximum Rents	Studio	1 Bedroom	2 Bedroom	3 Bedroom	4 Bedroom
Very Low Income	1,598	1,713	2,056	2,375	2,650
Low Income	2,561	2,738	3,293	3,805	4,245
Moderate Income	3,141	3,365	4,038	4,666	5,205

NOTE 1: The maximum rent is based on the following household size for each unit: Studio: 1 person; 1-bedroom: 1.5 persons; 2-bedroom: 3 persons; 3-bedroom: 4.5 persons; 4-bedroom: 6 persons.

NOTE 2: Per the City of Menlo Park BMR Guidelines (Section 4.1.2), the monthly rental amounts for BMR unit shall not exceed seventy-five percent (75%) of comparable market rate rents. Additional calculations may be necessary for each project to ensure BMR rents comply with this requirement.

Table C

Occupancy Standards

Per the California Department of Housing and Community Development, occupancy of BMR units shall be limited to the following:

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

Note: 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 July 1, 2023 – June 30, 2024

Group A uses are Research & Development and Office.	Fee: \$21.65 per square foot of gross floor area.
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Group B uses are all other Commercial and Industrial Uses not in Group A.	Fee: \$11.75 per square foot of gross floor area.
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Commercial In-Lieu Fees are adjusted annually on July 1. Annual fee adjustments are posted on the City's website.