

# **BELOW MARKET RATE HOUSING PROGRAM GUIDELINES**

Income Limits/Section 11, Tables A and B Updated for 2009

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# 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. Unfortunately, many such renters pay a disproportionately high amount of their incomes in rent.

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

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

## 2. BMR HOUSING AGREEMENT AND REVIEW PROCESS

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

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

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

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

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

### 3. REQUIREMENTS FOR DEVELOPMENTS BY TYPE

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

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

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

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

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

(Refer to Section 11, Table D, for the current year's Commercial In lieu Fee Rates.)

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

to the conversion of floor area from a less intensive use (Commercial/Industrial uses) to a more intensive use (Office/R&D).

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

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

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

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

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

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

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

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

**3.4 Required Contribution for Residential Development Projects.** All residential developments of five (5) units or more are required to participate in the BMR Program. The preferred BMR Program contribution for all residential developments is on-site BMR units. If that is not feasible, 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 developers provide one (1) BMR unit.

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

**Twenty (20) or More Units.** The developer shall provide not less than fifteen percent (15%) of the units at below market rates to very low, low and moderate-income households.

**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 4.3.2.

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

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

##### **4.1 On-Site BMR Units.**

**4.1.1 Initial Price for For-Sale Unit.** The initial selling price of BMR For-Sale units is based on what would be affordable to households with incomes less than One Hundred Ten Percent (110%) of the median income related to household size, as established from time to time by the U.S. Department of Housing and Urban Development (HUD) for San Mateo County. See Section 11, Table A.

**4.1.2 Initial Price for Rental Unit.** The initial rental price of BMR rental units will be equal to or less than thirty percent (30%) of sixty percent (60%) of median income limits for City/Redevelopment subsidized projects and thirty percent (30%) of HUD Low Income limits for non-subsidized private projects, minus eligible housing costs. The maximum rent for specific BMR units will be based on Section 11, Table B of the BMR Guidelines. See also Sections 8.1.1 and 8.1.2.

The purchase or rental price for a BMR unit shall be established before final building inspection for such BMR unit.

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

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

The initial price or rent for the BMR units shall be established as stated in Sections 4.1.1 and 4.1.2 and in accordance with the BMR Income Guidelines in Section 11 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 Residential In Lieu Payments Based on Sales Price.**

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

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

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

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

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

*Example: In a development of 7 units, the BMR contribution would be, in order of preference: a) One BMR unit out of the seven units, with the possibility of a density bonus of one unit, or, if that is not feasible, b) Three units designated to pay an in lieu fee of 1% of the sales price, three units to pay in lieu fees of 2% of their sales prices and one unit to pay 3% of its sales price.*

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

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

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

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

## **5. CHARACTERISTICS OF BMR UNITS.**

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

**5.2 Design and Materials in BMR Units.** The design and materials used in construction of the BMR unit 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 a BMR housing unit until its purchase or rental price has been agreed upon in writing by the developer and the Director of Community Development. Also, the sale or rental process will not begin until the sales price is set.

### **5.3.1 Final Inspection Schedule for Smaller and Larger Developments.**

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

**Ten (10) to Nineteen (19) Units.** In developments of ten (10) or more units, including developments that are constructed in phases, for the first ten (10)

housing units, a BMR unit must pass final inspection before nine (9) market rate units may pass final inspection. For each additional group of ten (10) housing units, one (1) additional BMR unit must pass final inspection before nine (9) additional market rate units may pass final inspection.

**Twenty (20) or More Units.** In developments of twenty (20) or more units, including developments that are constructed in phases, for the first ten (10) housing units, a BMR unit must pass final inspection before nine (9) market rate units may pass final inspection. In addition, two (2) additional BMR units must pass final inspection before eight (8) additional market rate units may pass final inspection. For each additional group of Twenty (20) housing units, three (3) additional BMR units must pass final inspection before seventeen (17) additional market rate units may pass final inspection. No project or phase may pass final inspection unless all the BMR units, which equal (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 a BMR unit shall be calculated as affordable to households on the BMR Waiting List which are eligible by income at the time that the maximum price is set and which are of the smallest size eligible for the BMR unit. The affordability of the maximum price will take into consideration mortgage interest rates, minimum down payment, mortgage debt to income ratio and other qualifying criteria used by lenders at the time the sales price is 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 price shall be adjusted for the period between the month of completion of the BMR unit and the month of notification of intent to sell the units, with further adjustments for improvements and deterioration per the Guidelines. The adjustments shall be based on one-third of the increase in the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics, plus certain other equitable adjustments.

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

adjustments. The deed restrictions will also prohibit sales or transfers of the property except with the written consent of the City and at a price computed as above. Exceptions from all prohibitions against sale or transfer will include:

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

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

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

## **6. ELIGIBILITY REQUIREMENTS FOR HOUSEHOLDS.**

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

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

**6.1.2 Residence.** To qualify as a household that lives in Menlo Park, the household must have maintained its primary residence at an address located within the boundaries of the City of Menlo Park for a minimum of one (1) year, including prior to the date of qualification.

**6.1.3 Work.** To qualify as a household that works in Menlo Park the household must meet both of the following criteria:

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

**6.1.3.2 Hours of Work.** Work must average a minimum of twenty (20) hours per week over the course of the qualifying year, prior to the date of qualification.

**6.2 Income and Asset Limits for Purchasers of BMR Units.** Only households having gross incomes below one hundred ten percent (110%) of the HUD median income 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. Only households having non-retirement assets that do not exceed the value of the BMR units will be considered eligible. Assets will not include funds dedicated to federally recognized retirement programs, for example, IRAs and/or 401(K) plans.

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

**6.3 Waiting List Management.** A numbered Waiting List will be maintained by City of Menlo Park staff or the City's designee. Households who live or work in Menlo Park may submit an application to have their names entered on the Below Market Rate Housing Program Waiting List in the order in which applications are received. BMR units will be offered to households whose names are on the Waiting List in the order in which the applications were received. When a BMR unit is offered, 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.

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

**6.3.2 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.

**6.3.3** Households who are current BMR homeowners will be 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.

## **7. THE BMR UNIT PURCHASE PROCESS: BUYER SELECTION, SALE AND RESALE PROCEDURES.**

### **7.1 New Units and Condominium Conversions.**

**7.1.1** 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 Community Development Director.

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

**7.1.3** 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.

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

**7.1.5** The City or its designee determines the maximum price of the BMR unit based on an income up to one hundred ten percent (110%) of the San Mateo County median income for the smallest household size eligible for the BMR unit, 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. 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.

**7.1.6** 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.

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

**7.1.8** 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.

**7.1.9** 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.

**7.1.10** 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.

**7.1.11** The offer packet and application are sent to households with the lowest numbers on the City of Menlo Park's numbered Waiting List who are eligible for the size of the BMR unit. The packet will include:

- A list of lenders who have worked with the Program. The applicants may use one of these lenders or another lender of their choice.
- Estimates of income and assets needed to purchase the BMR units.
- If there are several sizes of units for which an applicant is eligible, the form on which the applicant is asked to state which size they are applying for.
- Time limits for the City's receipt of proof of the purchaser's pre-approval for a mortgage and for closing of the purchase are included in the offer packet.

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

**7.1.13** 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.

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

**7.1.15** 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.

**7.1.16** The developer shall be free to sell a BMR unit without restriction as to price or qualification of buyer if all of the following criteria are met, unless the BMR applicant's lender has a loan condition that a specific number of units in the development must be sold before the loan can be approved: (1) the City and the developer are unable to obtain a qualified buyer within six (6) months after the City has provided written notice both certifying that the unit is available for purchase and setting the price for the BMR unit, (2) the City or its designee does not offer to purchase the BMR unit within said six (6) months period, and complete said purchase within not more than sixty (60) days following the end of the six (6) month period, (3) the developer has exercised reasonable good faith efforts to obtain a qualified buyer. A qualified buyer is a buyer who meets the eligibility requirements of the BMR Program and who demonstrates the ability to complete the purchase of the BMR unit. Written notice of availability shall be delivered to the City Manager, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025-3483. Separate written notice of availability shall also be delivered to the Housing and Redevelopment Division, City of Menlo Park, 701 Laurel Street, Menlo Park, CA 94025-3483.

## **7.2 Process for Resale of BMR Units.**

**7.2.1** 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. When the seller notifies the City, and the City has 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 will state in writing that the ninety (90) day period for completing the sale of the BMR unit shall commence. The price will be set using information in Sections 7.2.2 through 7.2.5 below.

**7.2.2** 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.

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

**7.2.4** 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, minimum down payments). Monthly housing costs are estimated.

**7.2.5** 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.

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

**7.2.7** 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.

**7.2.8** The procedure continues the same as in Sections 7.1.8 – 7.1.16 above, with the seller substituted for the developer.

**7.2.9** The City or its designee submits to the title insurance company the Grant Deed, BMR Agreement and Deed Restrictions, and Request for Notice and the seller's release from the old deed restrictions, to be recorded with the new deed to the property.

## **8. REQUIREMENTS FOR BMR RENTAL DEVELOPMENTS**

### **8.1 Income and Rent Standards.**

**8.1.1 Income Limits Upon Occupancy of BMR Rental Units.** Only households having gross income below the HUD 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 Table A (Below Market Rate Household Income Limits).

**8.1.2 BMR Rent.** BMR units may be rented for monthly amounts not exceeding thirty percent (30%) of sixty (60%) of median household income limits for City/Redevelopment subsidized projects and thirty percent (30%) of HUD Low Income limits for non-subsidized private projects, minus eligible housing costs. The maximum amounts are listed in Section 11, Table B, (Maximum Monthly Housing Cost Limits for BMR Rental Units.) BMR rents may be adjusted from time to time to reflect any changes to the then current HUD Income limits.

**8.1.3 Tenant Selection and Certification Procedures.** Priority for occupancy of all BMR rental units shall be given to those eligible households who

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

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

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

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

**8.1.6 Vacation of Units and Re-Renting.** When a BMR tenant vacates, the owner must provide notice to the City, and re-rent the unit to a qualified BMR tenant in accordance with these Guidelines and the Affordability Restriction Agreement for the unit.

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

**8.1.8 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. 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.

## **9. EQUIVALENT ALTERNATIVES**

Nothing set forth herein shall preclude the City from considering reasonably equivalent alternatives to these Guidelines.

## **10. BELOW MARKET RATE HOUSING FUND ("BMR FUND")**

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

**10.2 Eligible Uses.** The BMR Fund will be used to reduce the cost of housing to levels that are affordable to very low, low and moderate-income households, as defined in the Housing Element of the City's Comprehensive 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. No portion of the BMR Fund may be used to pay any administrative, general overhead or similar expense of any entity.

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

- Provision of below market rate financing for homebuyers.
- Purchase of land or air rights for resale to developers at a reduced cost to facilitate housing development for very low, low or moderate-income households.
- Reduction of interest rates for construction loans or permanent financing, or assistance with other costs associated with development or purchase of very low, low or moderate-income housing.
- Rehabilitation of uninhabitable structures for very low, low or moderate-income housing.
- On-site and off-site improvement costs for production of affordable housing.

- Reduction of purchase price to provide units that are very low, low or moderate cost.
- Rent subsidies to reduce the cost of rent for households with limited incomes.

**10.4 Procedures.** Requests for use of BMR Housing Fund money shall be submitted to staff and Housing Commission 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.

**10.5 Annual Report.** At the close of each fiscal year, the Housing and Redevelopment Department shall report on activity during the previous year (deposits and disbursements) and available funds. The City's auditor shall periodically examine this report and all other BMR Fund financial records, and shall report the results of this examination. In addition, the Housing and Redevelopment Division shall report annually on activities assisted by monies from the BMR Fund. The report will review how the program is serving its designated purpose. It will include a discussion of the timely use of funds for actions taken to provide Below Market Rate housing units, a review of management activities, and staff recommendations for policy changes to improve the program's performance. In addition it will provide, for each activity, information corresponding to that required of funding requests listed above in Section 10.4.

**11. TABLES**

**Table A**

**Below Market Rate Household Income Limits**

<i>Household Size</i>	<i>HUD Very Low &amp; State Very Low</i>	<i>60% of Median</i>	<i>HUD Low &amp; State Lower</i>	<i>Median</i>	<i>110% of Median</i>	<i>120% of Median</i>
1	39,600	40,650	63,350	67,750	74,525	81,300
2	45,250	46,470	72,400	77,450	85,195	92,900
3	50,900	52,260	81,450	87,100	95,810	104,550
4	56,550	58,080	90,500	96,800	106,480	116,150
5	61,050	62,730	97,700	104,550	115,005	125,450
6	65,600	67,380	104,950	112,300	123,530	134,750
7	70,100	72,030	112,200	120,050	132,055	144,050
8	74,650	76,680	119,450	127,800	140,580	153,300

Source: Based on median income for a household of four persons as reported in the Income Guidelines for San Mateo County published by the United States Department of Housing and Urban Development in January 2009.

**Table B**

**Maximum Monthly Housing Cost Limits for BMR Rental Units**

<i>Unit Size</i>	<i>30% of 60% of Median</i>	<i>30% of HUD Low &amp; State Lower</i>
Studio	900	1,390
1	1,020	1,580
2	1,160	1,810
3	1,300	2,040
4	1,450	2,260
5	1,570	2,440

**Table C**  
**Occupancy Standards**

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	3
2	2	5
3	3	7
4	4	9

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

**Table D**  
**Commercial In-Lieu Fees for 2009-2010**

<b>Group A</b> uses are Research & Development and Office.	Fee: \$14.01 per square foot of gross floor area.
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<b>Group B</b> uses are all other Commercial Uses not in Group A.	Fee: \$7.61 per square foot of gross floor area.
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Commercial In-Lieu Fees are adjusted annually on July 1.