

ORDINANCE NO. 905

Amending Title 16 of the Menlo Park Municipal Code, by repealing Chapters 16.09 (Development Regulations for Housing Projects for Including Below Market Rate Units), 16.96 (Below Market Rate Housing Program for Residential Developments), and 16.98 (Below Market Rate Housing Program for Commercial and Industrial Developments), adding Chapter 16.96 (Below Market Rate Housing Program), and amending Chapter 16.04 (Definitions); and amending Title 15 of the Menlo Park Municipal Code, by amending Chapter 15.36 (Below Market Rate Housing Program)

SECTION 1. Title 16, Zoning, Chapter 16.09, *Development Regulations for Housing Projects Including Below Market Rate Units*, Chapter 16.96, *Below Market Rate Housing Program for Residential Developments*, and Chapter 16.98, *Below Market Rate Housing Program for Commercial and Industrial Developments*, of the Menlo Park Municipal Code are hereby repealed.

SECTION 2. Chapter 16.96 entitled *Below Market Rate Housing Program* is hereby added to Title 16 of the Menlo Park Municipal Code to read as follows:

Sections:

- 16.96.010 Purpose
- 16.96.020 Residential Development Projects
- 16.96.030 Commercial Development Projects
- 16.96.040 Development Regulations for Below Market Rate Units
- 16.96.050 Below Market Rate Housing Fund
- 16.96.060 Below Market Rate Housing Program Guidelines

16.96.010 Purpose. The purpose of the Below Market Rate (BMR) Housing Program is to increase the housing supply for households that have very low, low and moderate incomes compared to the median household income for San Mateo County. The primary objective is to create actual housing units, either “rental” or “for purchase” units, rather than equivalent cash. The Below Market Rate requirements associated with Residential Development Projects are a form of “inclusionary zoning”. The Below Market Rate requirements associated with Commercial Development Projects are a form of “linkage”. This Chapter authorizes the Below Market Rate Housing Program. The Program is implemented through Guidelines as adopted and amended from time to time by the City Council.

16.96.020 Residential Development Projects.

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

- (2) Requirements. For residential development projects of less than 20 units, the developer shall provide not less than 10 percent of the units at below market rates to very low-, low- and moderate-income households. For residential development projects of 20 or more units, the developer shall provide not less than 15 percent of the units at below market rates to very low-, low- and moderate-income households. If the number of units required for a residential development project includes a fraction of a unit, the developer shall provide either a whole unit or a prorata in lieu payment on account of such fraction as determined in the Below Market Rate Housing Program Guidelines. The requirements of this section may be met through the provision of on-site or off-site below market rate units as determined by the Housing Commission and the reviewing body (i.e. Planning Commission or City Council).
- (3) Review Process. As part of an application for an applicable residential development project, the developer shall submit a Below Market Rate Housing Agreement. The Agreement shall set forth the developer's plan to meet the requirements of this section. The Agreement shall be reviewed by the Housing Commission and forwarded with a recommendation to the reviewing body for the application request. The reviewing body shall act on the Agreement prior to or concurrently with the action on the application request. No building permit or other land use authorization may be issued or approved unless the requirements of this section have been met.

16.96.030 Commercial Development Projects.

- (1) Applicability. This section shall apply to conditional use permits, conditional development permits, planned development permits, subdivision approvals, architectural control approvals, variance approvals, and building permits for any commercial development project or the construction of such project or any portion thereof which includes any new square footage or any square footage that is converted from an exempt use to a non-exempt use or from a Group B (All other commercial/industrial uses) use to a Group A (Office/R&D) use.
- (2) Exemptions. The following uses are exempt from this section:
 - a) Private schools and churches;
 - b) Public facilities;
 - c) Commercial development projects of less than 10,000 square feet;
 - d) Projects that generate few or no employees.
- (3) Requirements. The developer shall mitigate the demand for affordable housing created by the commercial development project. The Below Market Rate Housing Program Guidelines provides various alternatives for mitigation. A commercial development project may be required to provide below market rate housing on-site (if allowed by the zoning district) or off-site. If it is not feasible to provide below market rate housing units, the developer shall pay an in lieu fee prior to issuance of a building permit as follows:
 - a) Group A use: \$10.00 per square feet of new gross floor area;
 - b) Group B use: \$5.45 per square feet of new gross floor area.

The in-lieu fee shall be adjusted annually on the first of July. The amount of such adjustment shall be based on a five-year moving average of the percentage increase, if any, in the price index of new homes sold in San Mateo County, published by the Construction Industry Research Board. Consequently the in lieu fee per square foot of development may increase over time – in no event will the in lieu fee be reduced below the fee for the previous year.

- (4) Review Process. As part of an application for a commercial development project, the developer shall submit a Below Market Rate Housing Agreement. The Agreement shall set forth the developer's plan to meet the requirements of this section. The Agreement shall be reviewed by the Housing Commission and forwarded with a recommendation to the reviewing body (i.e., Planning Commission or City Council) for the application request. The reviewing body shall act on the Agreement prior to or concurrently with the action on the application request. No building permit or other land use authorization may be issued or approved unless the requirements of this section have been met.

16.96.040 Development Regulations for Below Market Rate Housing Units.

- (1) Generally. The provisions of this section shall apply only to housing developments that provide one or more below market rate units in accordance with the provisions of this chapter.
- (2) Density and FAR Bonuses. For each Below Market Rate unit provided under the Below Market Rate Housing Program, a developer shall be permitted to build one additional market-rate unit and, in the case of a subdivision, to create a legal lot or condominium unit for such additional unit. In addition, a developer shall be permitted to increase the floor area associated with the residential development project by an amount that corresponds to the increase in allowable density. Requests for density bonuses of a maximum of 15 percent are subject to approval of the reviewing body (i.e., Planning Commission or City Council) associated with the required application.
- (3) Incentives. To accommodate the increase in allowable density and floor area ratio described in subsection 16.96.040(2), the developer may request exceptions from all development regulations of the applicable zoning district of a residential development project that includes below market rate units, except for density and floor area ratio.

16.96.050 Below Market Rate Housing Fund. Fees paid pursuant to this chapter shall be deposited in the Below Market Rate Housing Fund as described in the Below Market Rate Housing Program Guidelines.

16.96.060 Below Market Rate Housing Program Guidelines. The provisions of this chapter shall be implemented through the Below Market Rate Housing Program Guidelines as adopted by the City Council on January 12, 1988 and subsequently amended.

SECTION 3. Title 16, Zoning, Chapter 16.04, *Definitions*, of the Menlo Park Municipal Code is hereby amended to read as follows:

16.04.078 Below Market Rate Unit. “Below market rate unit” means a unit governed by a legal covenant or other restriction enforceable by the City restricting the availability of said unit to very low-, low- and moderate-income residents, which unit is rented or sold to a very low-, low- or moderate-income person or household.

16.04.462 Market Rate Unit. “Market rate unit” means a housing unit or the legal lot for such unit offered on the open market at going market rates.

SECTION 4. Title 15, Subdivision, Chapter 15.36, *Below Market Rate Housing Program*, of the Menlo Park Municipal Code is hereby amended to read as follows:

15.36.010 New residential developments. Compliance with the below market rate program specified in Chapter 16.96 of the Zoning Ordinance shall be required as a condition of approval of a tentative or final map, including a parcel map, required for, enabling, resulting in, or facilitating residential development on one or more parcels of the subdivision.

SECTION 5. If any provision or clause of this ordinance or the application thereof to any person or circumstance is held to be unconstitutional or to be otherwise invalid by court action, such invalidity shall not affect the other provisions of this chapter which provisions are declared to be severable.

SECTION 6. This ordinance shall be published once, within fifteen (15) days of its passage and adoption, in the Menlo-Atherton Recorder, a newspaper of general circulation, circulated in the City of Menlo Park and printed and published nearest the City of Menlo Park, and shall take effect thirty (30) days after its passage and adoption.

INTRODUCED on the 1st day of May, 2001.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the 15th day of May, 2001, by the following vote:

AYES:	Councilmembers:
NOES:	Councilmembers:
ABSENT:	Councilmembers:
ABSTAIN:	Councilmembers:

Ordinance No. 905
May 15, 2001
Page 5

APPROVED:

Nicholas P. Jellins
Mayor of the City of Menlo Park

ATTEST:

Susan Ramos, CMC
Administrative Services Manager/City Clerk