

RESOLUTION 2020-040

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
APPROVING MODIFICATIONS TO THE BELOW MARKET PRICE HOUSING
PROGRAM AND GUIDELINES.**

WHEREAS, the Below Market Price Housing Program and Guidelines were adopted by the Town in 1976; and

WHEREAS, on April 9, 2019, the Town Council Policy Committee held a public hearing to consider possible modifications to the Below Market Price Housing Program and Guidelines. The Policy Committee continued the matter to August 27, 2019, and directed staff to bring back possible modifications to the Below Market Price Housing Program Guidelines for further discussion; and

WHEREAS, staff prepared draft modifications for the Policy Committee's consideration; and

WHEREAS, on August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020, the Policy Committee held public hearings to consider modifications to the Below Market Price Housing Program Guidelines; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on August 12, 2020; and

WHEREAS, on August 12, 2020, the Planning Commission held a public hearing to consider modifications to the Below Market Price Housing Program Guidelines. The Planning Commission recommended that the Town Council approve the modifications with additional modifications; and

WHEREAS, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on October 6, 2020; and

WHEREAS, the Town Council finds that the modifications are consistent with the General Plan and its Elements and that the modifications are exempt from the California Environmental Quality Act, Section 15061 (b)(3).

NOW, THEREFORE, BE IT RESOLVED:

1. The Town Council of the Town of Los Gatos adopts the modifications to the Below Market Price Housing Program and Guidelines as follows:

Exhibit A

**TOWN OF LOS GATOS
BELOW MARKET PRICE HOUSING PROGRAM GUIDELINES**

I. Purpose

- A. Purpose: The overall purpose of the Below Market Price (BMP) Housing Program is to provide the Town of Los Gatos with a supply of affordable housing. While the program is available to all qualified applicants, the general intent of the program is to provide affordable housing for households who work or currently live in Los Gatos. The main goal is to increase the housing supply for households that have ~~median~~ moderate and low incomes compared to the median income for Santa Clara County and meet the housing needs identified in the Town's General Plan Housing Element. The Program further intends to ensure, to the greatest extent possible, that rent and re-sale of these housing units will remain affordable to median and low-income levels for the longest feasible time as approved by an authorized body. Although the Town has a fee-in-lieu of constructing actual units option for defined circumstances, the primary objective of the BMP Program is to obtain actual "rental" or "for sale" housing units rather than equivalent funds. All off-site BMP units shall be constructed within the Town of Los Gatos. The construction and occupancy of the BMP unit is determined according to these Town Council established guidelines and authorizing ordinances.
- B. Enabling Legislation: The ~~Below Market Price Program~~ BMP is governed by Division 6 of Article VIII of Chapter 29 of the Town Code. The BMP Program is administered under these ~~Below Market Price Program~~ BMP Housing Program Guidelines.

II. Below Market Price Housing Requirements – General

- A. Applicability: The BMP Program requirements shall apply to all residential ~~development~~ projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects that include five (5) or more residential units or parcels which involve:
1. New construction of ownership or rental housing units, including mixed use developments and addition of units to existing projects; ~~or~~

2. Subdivision of property for single family or duplex housing development;~~;~~
~~or~~
3. Conversion of rental apartments to condominiums or other common interest ownership; and; ~~or~~
4. Conversion of non-residential use to residential use.

B. Number of BMP Units: All residential ~~developments~~ projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and all residential planned development projects consisting of that include five (5) or more residential units or parcels are required to participate in the BMP Program. The requirements for participation increase by development size as shown below:

1. Five (5) to Nineteen (19) market rate units: The developer shall provide a minimum number of BMP units equal to ten (10) percent of the number of market rate units;
2. Twenty (20) to one hundred (100) market rates units: The developer shall provide a minimum of BMP units as determined by the following formula:

$$\text{Number of BMP units} = (.225 \times \text{total \# of market rate units}) - 2.5$$

This formula acts to increase the number of BMP units required, as a percentage of market-rate units, from ten percent (10%) to twenty percent (20%) over the range of 20 to 100 market rate units; and

3. One hundred and one (101) units or more: The developer shall provide a minimum number of BMP units equal to twenty percent (20%) ~~percent~~ of the number of market rate units.

BMP dwellings within a project of rental units ~~shall~~ should also be rental units. BMP units within a project of owner-occupied units ~~shall~~ should also be designated as units for purchase. BMP units within a project that contains both rental and owner-occupied units shall also be designated as both rental and as units for purchase, in a ratio similar to that of the market rate units.

The Town and developer may negotiate to provide more BMP units than required by the rules listed in these guidelines, ~~to fulfill a development's Community Benefit requirements.~~

C. Fraction of a BMP Housing Units: In determining the number of BMP units required, any decimal fraction of .5 or above shall be rounded up to the nearest whole number. Decimal fractions below .5 shall be rounded down to the nearest whole number.

D. Residential In-Lieu Payments: The general intent of the BMP Program is to provide the Town of Los Gatos with a supply of affordable housing for households who work or currently live in Los Gatos. However, there may be circumstances when

the construction of the BMP unit is impractical or there are unusual circumstances that make the construction of the unit inconsistent with Town policy. The Town, in limited circumstances, at its sole discretion, may consider an in-lieu payment alternative to the required BMP for a project with an underlying zone of HR unit in the case of Planned Unit development with an underlying zone of HR or a residential developments project, mixed-use project, multiple-family dwelling project, residential condominium project, condominium conversions, and all residential planned development projects with five (5) to nine (9) units with an underlying zone of HR. Prior to approving the in-lieu fee alternative, the applicant must demonstrate to the satisfaction of the Town why a BMP unit cannot be: ~~(1)~~ developed on the same site as the market rate units, and if it cannot be provided on the same site then; or ~~(2)~~ developed at an appropriate off-site location within the Town limits. If the developer provides sufficient justification that both of these alternatives are not viable, then an fee in-lieu fee option may be considered. The required in-lieu fee is as established by a separate resolution and is to be paid to the Town prior to issuance of the certificate of occupancy for the market rate residential unit that triggered the BMP requirement. The provision for a BMP unit applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

The in-lieu fee shall be equal to the amount of six (6) percent of the building permit valuation for the entire project. The total building permit valuation shall be determined by the Town Building Official.

Fees shall be paid prior to or at time of final occupancy as follows:

1. Multi-Family Owner-Occupied Developments Projects: Prior to occupancy of each phase, a proportional amount of fees shall be paid, as determined during the Planning approval process; and
- ~~2. Multi-Family Renter Occupied Developments: Prior to occupancy of each phase, a proportional amount of fees shall be paid, as determined during the Planning approval process.~~
32. Single-Family Planned Developments Projects: At time of final occupancy for each unit.

E. Housing Fund: In-lieu fees will be deposited into the Town's Affordable Housing Fund. Applications and or recommendations for use of remaining funds will be reviewed as received. Possible use of the funds include, but is not limited to, the following:

1. Subsidizing the cost of owner-occupied units to make them affordable to low/moderate income households;
2. Purchasing rental units to make them affordable to low/moderate income households;
3. Purchasing land for the future development of affordable housing;
4. Developing affordable housing;

5. Supplementing of affordable housing projects; ~~and developed through the Los Gatos Redevelopment Agency~~
 6. Funding administration of the program, as approved by the Town Council in its annual budget process.
- F. Off-Site Construction: The Town Council, in limited circumstances, at its sole discretion, may consider off-site construction of BMP units for continuum care facilities and for ~~Hillside Residential (HR) Zone District and residential developments projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects~~ with five (5) to nine (9) units with an underlying zone of HR that have provided sufficient justification to the Town that an on-site BMP unit is not viable.
- G. Phasing of the Construction of On- and Off-Site BMP Units: On- and off-site BMP units shall be constructed and Certificate of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town Council may grant an exception to these phasing requirements during the Planned Development project approval process ~~for condominium conversion developments~~.
- H. Affordability Agreement: The developer of “for sale” BMP units shall enter into an affordability agreement with the Town. The agreement will ensure that the BMP units are sold to qualified buyers and will be released by the Town through the escrow process once the BMP is sold to a qualified buyer.

III. Characteristics of BMP Units

- A. Size of units: ~~The size and design of~~ BMP dwelling units ~~shall~~ should to the extent possible, reasonably be consistent with the market rate units in the project. The Town and developer may negotiate regarding the size of units if more units than required are to be provided ~~under the Community Benefit requirements~~. BMP units should be provided proportionately in the same unit type mix (number of bedrooms) as the market rate units. In consideration of the household size of the households on the current program interest list, the Town and developer may negotiate to provide a greater proportion of a particular unit type. There ~~shall~~ should to the extent possible, not be a significant identifiable difference between the BMP and market-rate units visible from the exterior. The size and design of the BMP units ~~must~~ should to the extent possible, be reasonably consistent with the market-rate units in the development. The goal of the BMP Program is for a seamless integration of the BMP units with the market-rate units in a development.
- B. Location of units: BMP units shall be dispersed throughout the development, to the extent feasible; in all buildings, on each floor, and in each project phase. A concentration of BMP units in one location is not desirable and will generally not be allowed.

- C. Finish of units: The external appearance of BMP units should be indiscernible to that of the market rate units in the project. The internal finish of BMP units should be identical to that of the market rate units in the project, except that the developer may request Town approval of substitutions for luxury interior finishes, appliances, or fixtures, if such substitutions do not violate any Town code requirement.
- D. Project Facilities: All project facilities and amenities, including parking, must be available on the same basis to the BMP units as to the market rate units in the project, to the extent feasible, unless the deciding body approves a reduction in parking for the BMP units.

IV. The BMP Unit Purchase Process, Buyer Selection, and BMP Unit Sale and Resale Procedures.

A. Owner Occupied Units:

1. Applicant Eligibility

- a. Household Income: In order to be eligible to purchase an owner-occupied BMP unit, an applicant's annual household income must be no greater than one hundred and twenty percent (~~100~~ 120%) of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA). Household income will be determined in accordance with the guidelines provided in Appendix A of this document. Eligible income includes, but is not limited to the following:

- 1. Payment from employer;
- 2. Payment from self-employment (e.g.: Lyft, Uber, DoorDash, etc.);
- 3. Spousal support;
- 4. Social Security Income; and
- 5. Dividends or Annuities from retirement accounts.

Additional information may be requested for confirmation of the provided documents. Applicants must provide sufficient documentation of income, as outlined in the Program's application, to the Town for use in determining the applicant's income level. Final determination of an applicant's income level and Program eligibility shall be at the sole discretion of the Town and/or its designee.

- b. Household assets, such as real property, may also be considered in determining eligibility. Funds in excess of \$5,000 (excluding the

amount to be contributed as the Buyer's downpayment and retirement investment accounts such as 401K and 457K accounts) will be included when determining household income. In such cases, annual income will include the greater of the actual income from household assets or a percentage of the value of household assets based upon the current passbook savings rate as established by HUD. This income, if any, will be included as part of the household's total income.

c. b. Housing Costs: In order to be eligible to purchase an owner-occupied BMP unit, an applicant must also demonstrate the ability to pay monthly housing costs. The monthly housing costs shall include the following factors:

1. ~~1.~~ ~~u~~ Unit price;
2. ~~2.~~ ~~e~~ Current lending rates;
3. ~~3.~~ ~~e~~ Estimated property taxes;
4. ~~4.~~ ~~e~~ Estimated homeowner's private mortgage insurance (PMI) costs;
5. ~~u~~ Utility assumption;
6. ~~h~~ Homeowners' association fees, if applicable; and
7. ~~5.~~ ~~o~~ Other expenses as determined necessary by the lender.

d. e. Mortgage Financing: All persons must qualify for their own mortgage financing for the purchase of available BMP units without assistance from the Town. ~~Qualifications must include the ability to pay taxes, insurance, closing costs and any homeowner association fees in addition to the mortgage. All loans used to purchase or refinance BMP units must be fixed rate and fixed term without balloon payments to minimize homeowners exposure to increased risks of mortgage default.~~ Qualifications must include:

1. The ability to pay taxes, insurance, closing costs, and any homeowner's association fees in addition to the mortgage;
2. All loans used to purchase or refinance BMP units must be fixed rate and fixed term, without balloon payments, to minimize homeowner's exposure to increased risks of mortgage default. The program reserves the right to identify additionally prohibited loan programs and/or characteristics; and
3. Co-signers are allowed.

e. d. Required Downpayment: A homebuyer shall have a minimum downpayment that is equivalent to at least ~~10~~ three percent (3%) of the BMP purchase price and is required to document the source of all downpayment funds. The minimum ~~10~~ three percent (3%)

downpayment is exclusive of any other supplemental downpayment assistance grant or loan programs available from other agencies.

f. Purchase Contract: At the time a purchase contract is signed, the applicant must deposit a minimum of one percent (1%) of the purchase price.

2. First Time Home Buyers: The Below Market Price (BMP) Program is for First Time Home Buyers. A First Time Home Buyer, by definition, is an applicant whose name has not appeared on a residential title in the counties covered by the Association of Bay Area Governments (ABAG) or Association of Monterey Bay Governments (AMBAG) which are Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma for at least three (3) years prior to application. Exception is made consistent with the Federal Housing and Urban Development (HUD) definitions (e.g. for people who were homeowners prior to a divorce, a displaced homemaker, a single parent who has only owned with a former spouse, a widow/widower of a veteran, etc.) and for tenants residing in a rental apartment proposed to be converted to a condominium or other common interest ownership prior to a Notice of Intent to Convert the development to an ownership residential unit.

B. Buyer Selection: A point system is used to establish a ranking of applicants for the purchase of an available unit. Applicants will be ranked according to total points and must have at least one point to be eligible to purchase a unit. In addition, applicant households must contain at least the same number of persons as the number of bedrooms in a unit, at the time of application, in order to be eligible to purchase that unit, if the unit contains three bedrooms or more.

All points are calculated per household, not for each individual within the household. For example, a household in which two members are senior citizens would receive six points for senior citizen status, not twelve points for two members having senior citizen status. Points are awarded as follows:

1. **Six points:**

- a. Senior citizens who reside in the Town at the time of application and have lived in the Town for at least the prior two years. A senior citizen is defined as any person 62 years of age or older at time of application or married couples living together when at least one spouse is 62 years of age or older at time of application;
- b. Senior Citizens who have lived in the Town for at least two years and have moved out of the Town within the last five years prior to the time of application;
- c. Disabled persons who reside in the Town at the time of application and who have lived in the Town for at least the prior two years. The

definition of “disabled” for the purpose of assigning points under this section shall be that used by the U.S. Social Security Administration for the purpose of determining eligibility for Social Security disability benefits;

- d. Households required to relocate their residence as a result of Council action or mobile home park closure;
- e. Regular Full-Time and Regular Part-Time Town employees as defined in the Town's Personnel Rules, but excluding Los Gatos Monte-Sereno Police Officers, who have been employed by the Town for a period of no less than ~~12 months~~ one year prior to the time of application;
- f. Single heads of household with dependent children who reside in the Town at the time of application and have lived in the Town for at least the prior two years. The definition of "single," when used in the context of "single heads of household," means only one parent is present in the home;
- g. All licensed pre-school and public or private K-12 school employees of schools and districts geographically located in and serving the Town, and who have been employed in such capacity for at least one year at the time of application; and
- h. All certified emergency first responders (e.g. sworn police officers, fire fighters, ~~and~~ emergency medical technicians, and paramedics) who have been employed in such capacity for at least one year at the time of application by an agency serving the Town.

2. **Four points:**

- a. Persons who live in the Town of Los Gatos at time of application and who have lived in the Town at least the prior two years.
 - i. Living in Los Gatos means: Occupying and renting, at the time of application, for at least two years prior to the application date, a bone fide rental dwelling unit within the incorporated Town limits, as evidenced by valid third-party documentation (e.g. current lease, CA driver's license or vehicle registration card, and/or utility bills showing applicant's name and street address in Los Gatos). For homeless applicants, evidence that the applicant's last permanent residence was located in Los Gatos and/or documentation from a case manager or homeless service provider may be used to document an applicant's current status in Los Gatos, which may include places or structures other than a bona fide dwelling unit (i.e. tent, vehicle, etc.)
- b. Persons who work in the Town of Los Gatos at time of application and have worked in the Town for at least the prior two years.
 - i. Working in Los Gatos means: A member of the household must

work a minimum of 20 hours per week as a permanent employee at a business within the incorporated Town limits. Telecommuting or working from an address located in Los Gatos for an employer not located in the Town of Los Gatos as defined above, shall not qualify as employment in the Town, unless the employer is providing the workspace in the Town as part of its corporate/company offices.

- ii. For persons who are retired at the time of application, the applicant's work history immediately prior to the date of retirement shall be considered in determining the length of employment. The Town may require applicants to submit pay stubs, W-2 forms, tax returns, or other satisfactory evidence as proof of employment at a Town of Los Gatos business. Length of employment shall be calculated from to the final date for submitting a Town Eligibility Preapplication.
- iii. Employment does not include volunteer work or any work without reportable income.

3. **Two points:**

- a. Households who have lived in the Town for at least 10 years and have moved out of the Town within the last ~~ten~~ 10 years prior to the time of application.
- b. Household size is worth two points per person.
- c. Households with an annual household income at or below fifty percent (50%) of the MFI, adjusted for household size, as defined by the HUD for the San Jose, CA PMSA.

4. **One point:**

- a. Households who live in Santa Clara County at time of the application.
 - i. Living within Santa Clara County means: Occupying and renting, at the time of application, for at least two years prior to the application date, a bona fide rental dwelling unit within the incorporated County of Santa Clara, as evidenced by valid third-party documentation (e.g. current lease, CA driver's license or vehicle registration card, and/or utility bills showing applicant's name and street address) in Santa Clara County. For homeless applicants, evidence that the applicant's last permanent residence was within the incorporated County of Santa Clara and/or documentation from a case manager or homeless service provider may be used to document an applicant's current status within the incorporated County of Santa Clara, which may include places or structures other than a bona fide dwelling unit (i.e. tent, vehicle, etc.)

- b. Households who work within the incorporated County of Santa Clara County at time of the application.
 - i. Working within Santa Clara County means: A member of the household must work a minimum of 20 hours per week as a permanent employee at a business within the incorporated County of Santa Clara. Telecommuting or working from an address located in Santa Clara County for an employer not located in the County as defined above, shall not qualify as employment in Santa Clara County, unless the employer is providing the workspace in the County as part of its corporate/company offices.
 - ii. For persons who are retired at the time of application, the applicant's work history immediately prior to the date of retirement shall be considered in determining the length of employment. The Town may require applicants to submit pay stubs, W-2 forms, tax returns, or other satisfactory evidence as proof of employment at a Santa Clara County business. Length of employment shall be calculated from to the final date for submitting a Town Eligibility Preapplication.
 - iii. Employment does not include volunteer work or any work without reportable income.
 - c. ~~b.~~ Households with an annual household income at or below eighty percent (80 ~~60~~%) of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA).
5. Applicants will initially be sorted by the number of preference points awarded. A lottery will be used to rank each qualified applicant and then will be randomly sorted through a lottery selection process in the case of a tie. Each applicant will be given a lottery ranking number in the case of a tie and will be notified in writing of the results of the selection process within one week of the lottery being conducted.
6. Application Review:
- a. Applications will be reviewed in ranking order. Additional documents may be requested from the applicant with a deadline(s) outlined. Failure to return the additional documents by the deadline(s) will result in program disqualification due to an incomplete application.
 - b. After a full application review, applicants who meet the program eligibility requirements will be issued a conditional approval letter from the Town. Applicants who do not meet the program eligibility requirements will be issued a disqualification letter.
 - i. A disqualified applicant can submit an appeal within seven days

from the date of the decision letter. Applicant must submit an appeal along with documentation demonstrating the reason for the appeal. Seven days from receipt of the appeal, a hearing officer will be assigned to review the appeal and additional documentation submitted by the applicant. Seven days from assignment to a hearing officer, a final decision will be delivered by mail to the applicant.

ii. Eligible A-applicants are provided the opportunity to purchase available units in the order of ~~point~~ ranking, from most points to least points. An applicant may refuse to purchase of an available unit twice ~~has two opportunities to refuse to purchase a unit~~ before being removed from the current applicant pool.

7. Applicants who do not qualify for a particular project or who are not provided the opportunity to purchase a unit in a particular project shall retain their eligibility to apply for future projects.
8. An applicant must obtain pre-approval for a mortgage loan within one week after notification of eligibility to purchase a unit. The applicant must submit documentation of loan approval within three weeks of notification of eligibility to purchase a unit. These time limits may be extended by the Town for good cause.
9. ~~Exception to the Buyer Selection Process:~~ An exception to the Buyer Selection Process may be granted to a resident of a rental apartment that is proposed to be converted to an “owner occupied” condominium or other common interest ownership development. In order to qualify for the exception, the resident must have resided in the rental apartment prior to the issuance of the Notice of Intent to Convert the development to an ownership project and shall meet the financial eligibility requirements to qualify for a BMP unit. The resident shall be provided first right of refusal, regardless of point ranking, for units in the following order:
 - a. The unit they reside in if it is designated as a BMP unit; or
 - b. Any other available BMP unit.

C. Determination of Initial Selling Price: BMP units shall be priced to be affordable to households in two income categories: ~~Median~~ Moderate Income Households (those whose income is above eighty percent (80%), but no greater than one hundred and twenty percent (100 120%), of the ~~County Median Income MFI~~); and Low Income Households (those whose income is above fifty percent (50%), but no greater than eighty percent (80%), of the ~~County Median Income MFI~~).

1. Fifty percent (50%) of the units in a project should ~~shall~~ be priced to be affordable to ~~Median~~ Moderate Income Households; and fifty percent (50%) should ~~shall~~ be priced to be affordable to Low Income Households. Whenever the calculations result in fractional units, then the number of units

priced to be affordable to Low Income Households shall be rounded up to the next whole number, and the number of units priced to be affordable to ~~Median~~ Moderate Income Households shall be rounded down to the next whole number, including zero (0). The following table applies this formula to projects with 1, 2, and 3 units:

Total Number of BMP Units in Project	Units Priced for Low Income Households	Units Priced for Median Income Households
1	1	0
2	1	1
3	2	1

The Town and developer may negotiate regarding the affordability mix of units, upon a showing by the developer that the project provides a public benefit to the residents of the Town. ~~to fulfill a development's Community Benefit requirements.~~

The Affordable Sales Price ~~affordability level~~ of a unit shall be for the purpose of setting the initial selling price only and does not prevent its sale to any household eligible to purchase an owner-occupied BMP unit, as set forth in these Guidelines.

2. Annually, the Town shall set the initial Affordable unit's Sales p Price for each unit type (number of bedrooms), for each of the two income categories consistent with Health & Safety Code Section 50052.5, and assuming a three percent (3%) percent downpayment.

These initial sales prices shall be set using the most recent ~~Median Family Income (MFI)~~ figures from the ~~United States Department of Housing and Urban Development (HUD)~~ for the San Jose, CA ~~Primary Metropolitan Statistical Area (PMSA)~~, and through the following calculations:

- a. For units to be priced to be affordable to ~~Median~~ Moderate Income Households: the average of the ~~one hundred and twenty percent (100~~ 120%) MFI annual income and the eighty percent (80%) MFI annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

Example: ~~100~~ 120 percent % MFI (4-person/4 bedroom) = \$105,000

80 percent % MFI (4-person/4 bedroom) = \$75,700

Average MFI = (\$105,000 + \$75,700) divided by 2

= \$90,350

Average MFI X Multiplier = Initial Sales Price

1. Assumptions of household size by size of unit are as follows:

Unit Size	Household Size
Studio	1
1 Bedroom	1
2 Bedroom	2
3 Bedroom	3
4 Bedroom	4

These assumptions of household size by size of unit shall be for the purpose of setting the initial sales price only, and do not prevent the sale of any unit to any household eligible to purchase an owner-occupied BMP unit, as set forth in these Guidelines.

- b. For units to be priced to be affordable to Low Income Households: the average of the eighty percent (80%) MFI annual income and the fifty percent (50%) annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

Example: 50 percent % MFI (4-person/4 bedroom) = \$52,500

80 percent % MFI (4-person/4 bedroom) = \$75,700

Average MFI = (\$52,500 + \$75,700) divided by 2
= \$ 64,100

Average MFI X Multiplier = Initial Sales Price

- c. Calculation of Multiplier: A Multiplier shall be calculated, based on reasonable assumptions about unit sales prices, based on: the most recent comparable sales of BMP units; current lending rates, as determined by the most recent Primary Mortgage Market Survey (PMMS) conducted by the Federal Home Loan Mortgage Corporation (Freddie Mac); and related costs; ~~and~~ using the following formula:

1. Determination of Total Housing Cost: Sample sales price - 10 three percent (3%) downpayment = mortgage. Annual debt service on mortgage + annual property taxes + annual homeowners fees + annual private mortgage insurance (PMI) = Total Annual Housing Cost.
2. Determination of Minimum Household Income: Assuming one-third of household income goes for housing expenses, Total Annual Housing Cost x 3 = Minimum Annual Household Income.
3. Determination of Multiplier: Sample Sales Price/Minimum Annual Household Income = Multiplier.

Copies of the initial sales prices, and the calculations made, shall be available on request from the Town's Community Development Department.

D. Required Documents for Completing a Home Purchase:

The following documents must be read and signed by the Owner(s) before the sale or resale of a BMP unit is completed:

1. Promissory Note;
2. Performance Deed of Trust;
3. Deed Restriction, Refinance Restriction, and First Right of Refusal Agreement. Council approved Deed Restrictions shall be recorded with each Below Market Price dwelling unit in order to preserve indefinitely the affordability of the unit for persons of low and median moderate income; and
4. Request for Notice Under Section 2924 (b) of California Civil Code, for each lender Deed of Trust record on title.

E. Resale of Units:

1. If the owner elects to sell his/her unit, the Town must be notified in writing by the owner;
2. When a ~~Below Market Price~~ BMP dwelling unit becomes available for resale, the Town shall set the resale price and make the unit available for purchase through the BMP process;
3. The Town determines the resale price in accordance with the deed restriction recorded on the property;
4. The ~~homeowner~~, as noted in the recorded Deed Restriction, is responsible for paying all closing costs (including commissions or fees); and
5. The homeowner is responsible for paying all costs related to a pest inspection prior to the sale of the property, as well as the cost to cure any deficiencies noted as "Section 1" in the inspection report prior to the close of escrow.

F. General Requirements:

1. Occupancy of Units: Consistent with the deed restriction that will be recorded on the subject property, the household purchasing a BMP unit must occupy the unit as their his or her primary residence during their his or her ownership of said unit. Annual compliance monitoring will be performed to confirm proof of owner occupancy. The owner shall cooperate with the Town and provide required certifications and any reasonable requests for supporting documentation to confirm compliance within fifteen (15) days of receipt of a written request by the Town. The Town or its designee has the right to review occupancy on a case-by-case basis. If the Town determines that an owner has intentionally made false statements or misrepresented any facts on the annual certification, or if an owner fails to submit the Certification of Owner Occupancy, the Town will treat this as a breach of the Deed Restrictions and will take all legal remedies available.
2. Capital Improvements: Consistent with the deed restriction, BMP homeowners will have the opportunity to increase their resale price to reflect pre-approved documented costs associated with capital improvements. To maintain the affordability for future BMP owners, the Town will cap all eligible capital improvements at ten percent (10%) of the resale price.
3. Title Transfer Restrictions: Any transfer without satisfaction of the provisions of the Deed Restrictions is prohibited.

V. Requirements for BMP Rental Development

A. Administration: The program shall be administered by the Town or its designee.

B. Applicant Eligibility:

1. Household Income: In order to be eligible to rent a BMP rental unit, a household's annual income must be no greater than ~~80~~ one hundred and twenty percent (120%) of the ~~Median Family Income (MFI)~~, adjusted for household size, as defined by the ~~United States Department of Housing and Urban Development (HUD)~~ for the San Jose, CA ~~Primary Metropolitan Statistical Area (PMSA)~~. Household income will be determined in accordance with the guidelines provided in Appendix A of this document. Eligible income includes, but is not limited to the following:
 - a. Payment from an employer;
 - b. Payment from self-employment (e.g.: Lyft, Uber, DoorDash, etc.);
 - c. Spousal support;
 - d. Social Security Income; and
 - e. Dividends or Annuities from retirement accounts.

Additional information may be requested for confirmation of provided documents.

2. Priority will be given to those households whose income is less than fifty percent (50%) of the MFI.
3. ~~Household assets may also be considered in determining eligibility.~~ Household Assets: For households applying to be a tenant of a BMP unit, the maximum asset limit is equal to the maximum household income adjusted for household size that is allowable in order to be eligible for the program. The maximum allowable household income limits for the BMP rental program are published annually. Assets are calculated based on account balances at the time of application.
4. Ability to Pay Rent: A tenant's ability to pay monthly rent will also be considered in determining tenant eligibility.

C. Tenant Selection: The property owner or manager of the development shall market the BMP unit(s) and solicit rental applications. Applications from tenants selected by the property owner or manager will be forwarded to Town or its designee for verification of income eligibility.

D. Annual Re-Certification of Income: At least once a year, the Town or its designee shall requalify BMP tenants to verify that they are eligible to remain in BMP rental units.

- a. The Town or its designee will provide the “BMP Renter Occupancy Certification Form” to all BMP tenants who have lived in a BMP unit for at least one year. If the BMP renter fails to submit a signed Occupancy Certification Form within thirty (30) days of the written request, then the lease shall automatically terminate, and the rent will increase to market rate, as determined by the apartment owner/property manager or the Town, within sixty (60) days of written notice from the apartment owner/property manager.
- b. On an annual basis, re-certification shall be based upon the BMP tenant’s household income as determined by:
 - i. Copies of payroll stubs or other verification of employment for the last two consecutive months;
 - ii. Prior year tax returns;
 - iii. Bank statements for the last two consecutive months;
 - iv. Household size; and
 - v. Town or its designee will accept signed affidavits in lieu of the following documentation:
 - a. No Financial Accounts under the tenant(s) name; and
 - b. No Income under the tenant(s) name.

E. Management:

1. BMP rental units shall be ~~managed~~ maintained and managed by the property owner or manager in the same manner as other units in the development.
2. An affordable BMP unit may not be leased until the Town has approved the unit for occupancy.
3. Tenants of BMP rental units are eligible to receive conciliation and mediation

services provided through the Town's Rental Dispute Resolution Program, when there is no concurrent issue concerning increase in or the amount of rent except as they regard rent increases.

4. All BMP units must be rented to BMP tenants approved by the Town or its designee.
5. An apartment owner/property manager shall notify the Town or its designee of any available BMP units and the Town or its designee shall have fourteen (14) days to provide apartment owner/property manager with an income eligible candidate(s). In reviewing each candidate, the apartment owner/property manager may apply the same tenant selection criteria, such as past performance in meeting financial obligations and credit references, as those applied to applicants for non-BMP units on the property, except for those standards relating to income eligibility and minimum income requirements.
6. Executed Lease Agreement and BMP Addendum: The apartment owner/property manager or tenant will provide the Town or its designee with a copy of the executed lease agreement and BMP Addendum within five (5) business days of execution.
7. Terms of Lease Agreement:
 - i. BMP tenants will be subject to the same conditions of tenancy as other tenants occupying the subject property, except for terms relating to occupancy, income eligibility, annual recertification, and limits on rents; and
 - ii. Each BMP unit shall be leased under a form of tenant lease approved by the Town or its designee. The tenant lease and BMP addendum shall, among other matters:
 - a. Provide for termination of the lease for failure: (1) to provide any information required under the Regulatory Agreement or reasonably requested by the apartment owner/property manager to establish or recertify the tenant's qualification, or the qualification of the tenant's household, for occupancy of the BMP unit; or (2) to income qualify as a result of any material misrepresentation made by such tenant with respect to the income computation or certification;
 - b. Be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the apartment owner/property manager and the tenant; however, the rent may not be raised more often than once every twelve (12) months after such initial year. The apartment owner/property manager will provide each tenant with at least sixty (60) days' written notice of any increase in rent applicable to such tenant;
 - c. Prohibit subleasing of the BMP unit or any portion of the BMP unit, contain nondiscrimination provisions, and include the tenant's obligation to inform the property manager of any need for maintenance or repair;
 - d. Allow termination of the tenancy only for an increase in tenant's household income above qualifying income or for good cause, including violation of the terms and conditions of the tenant lease, violations of house rules, non-payment of rent, violations of applicable federal, state, or local law, or other good cause;

- e. Include, at the apartment owner's option, the obligation for the tenant to provide a security deposit not exceeding two (2) months' rent; and
 - f. Otherwise conform to BMP Guidelines.
8. Occupancy Requirements: The apartment owner/property manager shall notify the Town or its designee if it suspects that there have been any changes to the occupancy of the BMP unit. If the tenant fails to receive approval from the Town for any changes in occupancy, or subleases the property, or fails to provide the annual occupancy recertification, the tenant shall be in violation of its lease and will no longer qualify as a BMP tenant.
9. Waiting List Management:
- a. Waiting List: Anyone who wishes to be admitted to the property or to be placed on the property's Waiting List must complete an application. The application must include a signature certifying the accuracy and completeness of information provided. If the applicant is placed on the property's Waiting List, the List will note the name of the applicant, the date and time of application, the size of unit desired, and any other pertinent information;
 - b. Accommodating Persons with Disabilities: The property shall accommodate persons with disabilities who cannot utilize the property's preferred application process, by providing alternative methods of application in-take (e.g. accepting mailed or online applications). In addition, the public notification of any closing or opening of the property's Waiting List shall comply with HUD fair housing requirements, such as adopting suitable means to assure that notices reach eligible individuals with disabilities and those with limited English proficiency. The property also ensures that notices of and communications will be provided in a manner that is effective for persons with hearing, vision, and other communications-related disabilities consistent with Section 504 and ADA. Accessible and auxiliary aids and services are provided as needed, [e.g., materials in Braille, audio, large type, sign language interpreters, computer-assisted real time transcription (CART) services, assistive listening devices, etc.] Applications will be made available ahead of time, and in multiple venues, both physical and online, which will create a more accessible, and more effective application intake;
 - c. Use of a Lottery System: Due to the high volume of applications, when opening a previously closed Waiting List for a set period of time, the property will use a lottery to select which applicants will be placed on the Waiting List, and the order in which they will be placed. A public notice will clearly indicate that this system will be used to place applicants on the Waiting List; Further, applicants should be notified that, so long as the application is submitted within the stated timeframe, the timing of the application submission will have no effect on how soon they may be offered a unit. The date and time the lottery is held will be the date recorded on the Waiting List. Any preferences the applicant qualifies for will also be noted on the Waiting List;
 - d. Selecting Names from the Waiting List: The property will select names from the Waiting List in chronological order to fill vacancies;

- e. Applicant's Refusal to Accept a Unit: When appropriately sized units are offered to applicants, and an applicant turns down a unit offer two consecutive times, the applicant will be removed from the Waiting List;
 - f. Maintaining the Waiting List: In order to maintain a balanced application pool, the property may, at its discretion, restrict application acceptance, suspend application acceptance, and close a Waiting List in whole or in part. Decisions about closing the Waiting List will be based on the number of applications available, and the ability of the property to house an applicant within a reasonable period of time. Closing the Waiting List, restricting acceptance, or opening the Waiting List must be approved by the Town or its designee;
 - g. Advertising: Advertising and outreach activities will be done in accordance with applicable fair housing marketing requirements;
 - h. Updating the Waiting List: The Waiting List will be updated at least annually. The applicant is responsible to update the application with any changes that may occur to remain active on the current Waiting List;
 - i. Preferences: Assigning preferences to applicants who meet certain criteria is a method intended to provide housing opportunities to applicants based upon household circumstances. Applicants with preferences are selected from the Waiting List and receive an opportunity for an available unit earlier than those who do not have a preference. Preferences affect only the order of applicants on the Waiting List. They do not make anyone eligible who was not otherwise eligible, and they do not change an owner's right to adopt and enforce tenant screening criteria; and
 - j. Monitoring: The Town or its designee may request to audit the Waiting List from time to time to ensure compliance.
- E. Unit Rents: Rents may not exceed eighty percent (80%) of the most current Fair Market Rents as determined by the Santa Clara County Housing Authority.
- F. Annual Review: If a tenant's income increases so that it falls between eighty percent (80%) and ~~100~~ one hundred and twenty percent (120%) of MFI, then the rent may be increased in accordance with the Town's Rental Dispute Ordinance; and the unit shall still be considered a BMP Rental Unit. However, if a tenant's income exceeds ~~100~~ one hundred and twenty percent (120%) percent of MFI, the rent may be increased to the average rent of similar units in the complex; in this latter case, the unit will no longer be a BMP unit and the next available unit that is comparable in size shall be designated as a BMP unit in its place, and must be rented to an eligible household so that the number of BMP units within the project remains the same.
- G. Deed Restrictions: Council approved Deed Restrictions shall be recorded for each ~~Below Market Price~~ BMP rental dwelling unit, in order to preserve indefinitely the affordability of the unit for persons of low and moderate income.

VI. RENTAL UNITS - NEW ~~SECOND~~ ACCESSORY DWELLING UNITS

- A. Administration: The program shall be administered by the Town or its designee.
- B. Second Accessory Dwelling Unit Incentive Program: ~~29.10.310 of the Town Code~~ Accessory Dwelling Units (ADU) owners, may choose to participate in ~~the Second Unit an ADU Incentive Program (SUIP)~~ as referenced in Section 29.10.320(a) of the Town Code and as set forth below.
1. The SUIP Incentive Program consists of a no interest construction loan to a property owner who intends to develop a new ~~second ADU unit~~. The loan amount shall be determined based on the square foot construction cost as set forth in the current version Uniform Building Code as adopted by the Town for new construction and remodels. The loan amount will be calculated at one hundred percent (100%) of the construction cost if the unit is income and rent restricted to serve households with incomes below fifty percent (50%) of the ~~Median Family Income (MFI)~~, adjusted for household size, as defined by the ~~United States Department of Housing and Urban Development (HUD)~~ for the San Jose, CA ~~Primary Metropolitan Statistical Area (PMSA)~~, or eighty percent (80%) of the construction cost if the unit is income and rent restricted to serve households with incomes below eighty percent (80%) of MFI.
 2. When a property owner participates in the SUIP Incentive Program, a deed restriction shall be recorded on the property. The deed restriction shall stipulate the rental rate, tenant income level, duration of affordability, ~~and loan repayment requirement, and as well as~~ any other criteria as determined appropriate by the Town.
 3. ~~An SUIP Incentive Program loan to construct an second accessory dwelling unit within the Central Los Gatos Redevelopment Project area shall be funded using Redevelopment Affordable Housing Funds and shall remain affordable for 55 years. An SUIP Incentive Program loan to construct an second ADU unit outside the Central Los Gatos Redevelopment Project area shall be funded using BMP Program Funds and shall remain affordable for a minimum of 30 years. The SUIP Incentive Program affordability restrictions as set forth in this section may only be amended by action of the Town Council.~~
 4. A tenant's ability to pay monthly rent will also be considered in determining tenant eligibility. Applications from tenants selected by the property owner or manager will be forwarded to the Town or its ~~agent~~ designee for verification of income eligibility. Rental agreements shall be submitted to the Town or its ~~agent~~ designee to verify compliance with the provisions of this section. Tenants are eligible to receive conciliation and mediation services provided through the Town's Rental Dispute Resolution Program except as they regard rent increases.

5. Units targeted to households with incomes up to ~~80~~ one hundred and twenty percent (120%) of the ~~Median Family Income (MFI)~~ shall have rents restricted to ~~80~~ one hundred and twenty percent (120%) of Fair Market Rents as determined by the ~~Santa Clara County Housing Authority HUD~~. Units targeted to households with incomes up to fifty percent (50%) of ~~CMH MFI~~ shall have rents restricted to fifty percent (50%) of Fair Market Rents as determined by the ~~Santa Clara County Housing Authority HUD~~. Tenant rents and incomes will be monitored annually.

APPENDIX A: Employment Income Calculation Methodology

Annual employment income must be determined for each job currently held. The following methods will be used for calculating household income for qualification purposes for the Town of Los Gatos BMP Program, with the vast majority of households expected to be evaluated under Method One (below). The Town or its designee will apply Method #1 for each job currently held by each household member. If, under the following circumstances, Method #1 is not the most accurate method of projecting of annual income, then at the discretion of Town or its designee, Methods #2-5 may be applied under certain scenarios, including but not limited to the following:

1. Household earns income from commissions;
2. Household is an educator;
3. Household's first pay date for the job was later than January 1st of the current year;
4. Household is receiving temporary disability compensation; or
5. Household is a seasonal worker.

Method #1: Year-to-Date Income from Paystubs

Use the most current paystub, divide the year-to-date (YTD) gross income by the current pay period number to get the pay period average. Then multiply the pay period average by the total number of pay periods the household receives in one year.

Example of Calculating Year-to-Date Income with Paystubs:

YTD income as stated on the most recent paystub for the calendar year = \$20,000

Current pay period on most recent pay stub = 10

Estimated pay period amount = \$2,000 (\$20,000 divided by 10)

Total number of pay periods in one year for the household = 24

Annualized pay = \$48,000 (\$2,000 x 24)

Method #2: Year-to-date Income and Last Year's Income

Use the most current paystub (or the last paystub received if the household currently receives no income) to determine the household's year-to-date gross earnings. Add the year-to-date earnings to the household's gross income from the most recent year's income tax return. Divide this number by 12 (to account for last year's earnings) plus the number of months the household's year-to-date income encompasses. This is the average monthly income. Multiply this number by 12 to annualize.

Example of Calculating Income using YTD plus Last's Year's Income:

YTD income as stated on the most recent paystub for the calendar year = \$20,000

Gross income from last year's income tax return: \$50,000

Number of months household has worked this year: 6

$\$50,000 + \$20,000 = \$70,000$

6 months + 12 months = 18 months

$\$70,000/18 = \$3,888.89$ (average monthly income)

$\$3,888.89 \times 12 = \$46,666.67$ (annualized income)

Method #3: Two-Year Average

Add the household's total gross income from the two most recent years' income tax returns.

Divide this number by 2 to get the two-year average.

Example of Calculating Income using the Two-Year Average:

Gross income from last year's income tax return: \$50,000

Gross income from the previous year's income tax return: \$55,000

$\$50,000 + \$55,000 = \$105,000$

$\$105,000/2 = \$52,500$ (average annual income)

Method #4: Paystub Average

Add the household's gross income from the two most recent months' paystubs. Divide this number by the number of paystubs included to get the pay period average. Then multiply the pay period average by the total number of pay periods the household receives in one year.

Example of Calculating Income using the Pay Check Average:

Total of most recent two months' paystub = \$8,000

Number of pay stubs included = 4

Estimated pay period amount = \$2,000 (\$8,000 divided by 4)

Total number of pay periods in one year for the household = 24

Annualized pay = \$48,000 (\$2,000 x 24)

Method #5: Verification of Employment

Reference the total annual income provided by Household's employer in Verification of Employment form (VOE).

In the above Method #1, Method #2, and Method #4, in cases where employer paid health insurance costs are included within the gross income on a household's paystubs, this income may be excluded from the gross income calculation.

APPENDIX B: Self-Employment Income Calculation Methodology

Self-employment income calculations will be based on the adjusted income from the two most recent years and a YTD Profit & Loss statement. The adjusted income shall include net income from tax returns with any depreciation or amortization added back. If the resulting adjusted income is negative, count the income as \$0. Negative cash flow from a business may not be used to offset income generated from other sources when determining compliance with income limits.

The Town or its designee will apply the following three income methods to calculate self-employment income. The method used will be determined by how long the household has been self-employed, as follows:

1. If the Household member is self-employed for less than two years but over one-year, annual income will be calculated by either; Method #1; or Method #2. The larger value of the two calculations will be selected as annual self-employment income. In the examples below, the calculation from annualizing Method #2 (\$60,000) is higher, and will be selected as the Household member's self-employment income.
2. If a business started in the same year as the year of qualifying, the income will be calculated using Method #2. In this case, the Household member must supply copies of all invoices and payments made to the Household member in support of the YTD Profit & Loss statement submitted.
3. If the Household member is self-employed for over two years, the Town will apply Methods #1, #2 and #3 to calculate self-employment income, and use the calculation that yields the highest annual income to determine eligibility. In the examples below, the calculation from annualizing Method #2 (\$60,000) is the highest, and will be selected as the Household member's self-employment income.

Method #1: YTD Profit & Loss Statement and Last Year's Tax Return

YTD Profit & Loss Statement and Last Year's Tax Return Calculation:

Use the adjusted YTD Profit & Loss statement to determine the Household member's year-to-date earnings. Add the YTD earnings to the Household member's adjusted income from the most recent year's income tax return. Divide this number by 12 (to account for last year's earnings) + the number of months the Household member's YTD income encompasses. This is the average monthly income. Multiply this number by 12 to annualize.

Example of Calculating Income using YTD Profit & Loss Statement and Last Year's Tax Return:

YTD adjusted income as stated on Profit & Loss statement = \$20,000

Adjusted income from last year's income tax return = \$50,000

Number of months from the YTD Profit & Loss Statement = 4

\$50,000 + \$20,000 = \$70,000

4 months + 12 months = 16 months

\$70,000/16 = \$4,375 (average monthly income)

\$4,375 x 12 = \$52,500 (annualized income)

Method #2: YTD Profit & Loss Statement

YTD Profit & Loss Statement Calculation:

Divide the year-to-date (YTD) adjusted income by the number of months on the YTD Profit & Loss statement to get the average monthly income. Multiply this number by 12 to annualize.

Example of Calculating Income with YTD Profit & Loss statement:

YTD adjusted income as stated on Profit & Loss statement = \$20,000

Number of months = 4

Average monthly income = \$5,000 (\$20,000 divided by 4)

Annualized pay = \$60,000 (\$5,000 x 12)

Method #3: Two-Year Tax Returns

Two-Year Tax Returns Calculation:

Add the adjusted income from the two most recent years' income tax returns. Divide this number by 2 to get the two-year average.

Example of Calculating Income using the Two-Year Average:

Adjusted income from last year's income tax return: \$50,000

Adjusted income from the previous year's income tax return: \$45,000

\$50,000 + \$45,000 = \$95,000

\$95,000/2 = \$47,500 (average annual income)

2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by state and federal Law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California, held on the 6th day of October 2020 by the following vote:

COUNCIL MEMBERS:

AYES: Rob Rennie, Marico Sayoc, Barbara Spector, Mayor Marcia Jensen

NAYS: None

ABSENT: None

ABSTAIN: None

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 10/14/20

ATTEST:



TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: 10/15/2020

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