



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 10/06/2020

ITEM NO: 7

DATE: September 30, 2020
TO: Mayor and Town Council
FROM: Laurel Prevetti, Town Manager
SUBJECT: Consider Approval of Amendments and Introduce the Draft Ordinance by Title Only to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program and Adopt a Resolution to Modify the Below Market Price Housing Program Guidelines. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos.

RECOMMENDATION:

Consider approval of amendments and introduce the draft Ordinance by title only to amend Chapter 29 (Zoning Regulations) of the Town Code regarding the Below Market Price Program (Attachment 2) and adopt a resolution to modify the Below Market Price Housing Program Guidelines (Attachment 3).

BACKGROUND:

The Town first adopted BMP regulations in 1976 to provide the Town with a supply of affordable housing. The BMP regulations have been modified over the years since they were first adopted, with the most recent modifications to the regulations occurring in 2009.

The Town's BMP regulations have resulted in a current inventory of 55 for sale BMP units and 119 rental BMP units. The Town's administrator of the BMP Housing Program, Hello Housing, manages the daily operations of the program in partnership with the Town.

At the request of a previous Mayor, the discussion of BMP regulations was placed on the March 5, 2019 Town Council agenda. At the March 5, 2019 meeting, the Town Council discussed the matter and forwarded the item to the Town Council Policy Committee for review and recommendations.

PREPARED BY: JOCELYN SHOOPMAN
Associate Planner

Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

BACKGROUND (continued):

On April 9, 2019, August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020, the Policy Committee considered potential amendments to the Town Code regarding BMP regulations and modifications to the BMP Housing Program Guidelines.

On January 28, 2020, the Policy Committee recommended staff bring forward amendments to Chapter 29 of the Town Code regarding BMP regulations and modifications to the BMP Housing Program Guidelines for consideration by the Planning Commission and the Town Council to increase the number of BMP units built and decrease the opportunities to pay in-lieu fees, resulting in the construction of more on-site BMP units for development projects.

On August 12, 2020, the Planning Commission reviewed the proposed Town Code amendments regarding the Below Market Price Program and modifications to the Below Market Price Housing Program Guidelines (Attachment 4). Exhibit 2 contains the Town Council minutes for the March 5, 2019 meeting, and Exhibits 3 through 7 contain the Policy Committee minutes for the April 9, 2019, August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020 meetings.

The Planning Commission recommended modifications to the draft Ordinance language and the draft BMP Housing Program and Guidelines based on the discussion at its hearing. The modifications as recommended by the Planning Commission are included in the draft Ordinance (Attachment 2) and draft BMP Housing Program and Guidelines (Attachment 3). The Planning Commission's recommended modifications are shown in black ~~strike through~~ and underline font and the additional modifications proposed by Hello Housing are shown in red ~~strike through~~ and underline font. Attachment 5 contains the verbatim minutes for the Planning Commission meeting.

As part of the larger conversation regarding Los Gatos becoming a more inclusive community, the Town hosted a community workshop regarding affordable housing on September 29, 2020. Town Manager Prevetti, Director Paulson, Town Attorney Schultz, and Associate Executive Director for West Valley Community Services Sujatha Venkatraman listened to community ideas and answered questions regarding existing program and services, State legislation, and new opportunities to increase affordable housing in Los Gatos (see Attachment 8 for the workshop summary).

DISCUSSION:

The Planning Commission raised the following questions for staff to address for the Council. Staff's response is contained below each question:

DISCUSSION (continued):

1. How does the point system account for part-time employees or self-employed persons who hold more than one job across the County?
 - a. The total number of hours worked at all jobs within the Town of Los Gatos or the total number of hours worked at all jobs within the County of Santa Clara are added together. For self-employed workers, a self-affidavit must be provided as part of the application submittal.
2. What is the mechanism to require that a second unit constructed by participating in the Incentive Program remain affordable for a minimum of 30 years?
 - a. A property owner that participates in the Incentive Program must record a deed restriction on the property that stipulates the rental rate, tenant income level, duration of affordability, and loan repayment requirement, as well as any other criteria as determined appropriate by the Town.
3. What happens to the tenant of a rental unit if their household income increases to exceed the specified Median Family Income (MFI) limit?
 - a. If a tenant's income exceeds the specified MFI limit, the rent may be increased to the average rent of similar units in the complex; in this 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.
4. Due to the need for more affordable housing, should the number of BMP units required for a development project be increased by an additional 10 percent?
 - a. Attachment 6 contains a comparison of affordable housing requirements for other cities located in Santa Clara County and Alameda County, prepared for the County of Santa Clara by Keyser Marston Associates in 2016. To modify the threshold for the number of BMP units required in a development project, a nexus study would be required.
5. Due to the need for more affordable housing, should the in-lieu fee be increased?
 - a. Attachment 6 contains a comparison of affordable housing requirements for other cities located in Santa Clara County and Alameda County prepared for the County of Santa Clara by Keyser Marston Associates in 2016. To modify the in-lieu fee for BMP units, a nexus study would be required.
6. Does the Town have the ability to limit the Homeowners Association (HOA) fees for a BMP unit?
 - a. The Town does not have the ability to set a maximum limit on the HOA fees for a BMP unit.

DISCUSSION (continued):

7. Does increasing the rental household annual income from no greater than 80 percent of the MFI to 120 percent of the MFI, increase the applicant pool; therefore, causing less of a preference for low and very low households?
 - a. Increasing the household income for rental units up to 120 percent of the MFI, would result in additional qualified applicants being able to submit an application for a BMP rental unit. The California Department of Housing and Community Development defines a moderate-income level as 80 percent to 120 percent of the local area median income.
8. Should the point system be modified to grant additional points to low and very low-income levels to allow a greater opportunity to participate in the program?
 - a. The Town Council may choose to modify the point system to grant additional points to low and very low-income levels. Additional analysis might be required to determine if this modification would allow low and very low-income levels a greater opportunity to participate in the program.
9. How do the BMP Housing Program and Guidelines account for the resale valuation of a BMP unit where the previous owner completed upgrades to the home?
 - a. The BMP Housing Program and Guidelines detail that BMP homeowners have the opportunity to increase their resale price to reflect pre-approved documented costs. To maintain the affordability for future BMP owners, the Town will cap all eligible capital improvements at 10 percent of the resale price.

CONCLUSION:

Staff recommends that the Town Council:

1. Make the finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Attachment 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Attachment 1); and
3. Make the required finding that the modifications to the BMP Housing Program Guidelines are consistent with the General Plan (Attachment 1); and
4. Introduce the Ordinance of the Town of Los Gatos effecting the amendments of the Town Code regarding BMP regulations A-20-004 (Attachment 2), by title only with any specific changes identified and agreed upon by the majority of the Town Council; and
5. Adopt a Resolution approving modifications to the BMP Housing Program Guidelines (Attachment 3), with any specific changes identified and agreed upon by the majority of the Town Council.

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SUBJECT: Below Market Price Program

DATE: September 30, 2020

ALTERNATIVES:

Alternatively, the Council may:

1. Continue this item to a date certain with specific direction to staff;
2. Refer the item back to the Planning Commission with specific direction; or
3. Take no action, leaving the Town Code and BMP Housing Program and Guidelines unchanged.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendments to the Town Code will have a significant effect on the environment.

ATTACHMENTS:

1. Required Findings
2. Draft Ordinance
3. Draft Resolution
4. August 12, 2020 Planning Commission Staff Report with Exhibits
5. August 12, 2020 Planning Commission Verbatim Minutes
6. Table V-1 of Affordable Housing Nexus Study prepared for Santa Clara County
7. Public Comment received by 11:00 a.m., October 1, 2020
8. September 29, 2020 Community Workshop Summary

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TOWN COUNCIL – September 29, 2020

REQUIRED FINDINGS FOR:

Town Code Amendment Application A-20-004

Consider amendments to Chapter 29 of the Town Code regarding the Below Market Price Program and proposed modifications to the Below Market Price Housing Program and Guidelines.

FINDINGS

Required Findings for CEQA:

- It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act, Section 15061 (b)(3).

Required Findings for General Plan:

- The proposed amendments to Chapter 29 of the Town Code are consistent with the General Plan.
- The proposed modifications to the BMP Housing Program and Guidelines are consistent with the General Plan.

ATTACHMENT 1

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DRAFT ORDINANCE 2020-_____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS
AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING
THE BELOW MARKET PRICE PROGRAM**

WHEREAS, Chapter 29 (Zoning Regulations) of the Town Code of the Town of Los Gatos regulates the Below Market Price Program; and

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

WHEREAS, staff prepared draft amendments 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 amendments to Division 6 of the Town Code; 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 amendments to Division 6 of the Town Code. The Planning Commission recommended that the Town Council approve the amendments with 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, on October 6, 2020, the Town Council reviewed and commented on the amendments to Chapter 29 of the Town Code and the Town Council voted to introduce the Ordinance.

ATTACHMENT 2

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DO
HEREBY ORDAIN AS FOLLOWS:**

SECTION I

Chapter 29 of the Los Gatos Town Code is hereby amended as follows:

DIVISION 6. - HOUSING ASSISTANCE PROGRAM

Sec. 29.10.3000. - Intent.

This division is adopted to meet housing needs shown in the housing element of the general plan.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3005. - Below market price program—~~E~~ established.

This division establishes the below market price program (BMP).

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3010. - ~~Same Program~~ —~~I~~ intent.

The below market price (BMP) program requires the provision of dwellings that persons and families of moderate and low income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate and low income.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3015. - Application.

This division shall apply to all residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and ~~to all~~ residential planned development projects (~~in~~ Division 2 of ~~a~~ Article VIII of this chapter) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings. ~~Projects in the R1 and HR zones are excepted from BMP participation. The exception does not apply if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.~~

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3020. - Definitions.

For the purposes of this division the following definitions shall apply:

BMP dwelling means any residential dwelling unit designated for very low, low, and moderate income persons and families under the rules of this section.

Person of moderate income means one whose income falls within the range specified by the Town Council in the resolution authorized by section 29.10.3040.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3025. - Scope.

The Below Market Price 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, ~~or~~; and
4. Conversion of non-residential use to residential use.

~~Planned development with an underlying zone of HR shall only be required to pay an in-lieu fee as established by a separate resolution.~~

The residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects developments consisting of five that include (5) or more residential units are required to provide the following number of BMP units:

1. Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units;~~;~~
2. Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:

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

3. All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units;~~;~~
4. Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number;~~;~~ and
5. The Town, in limited circumstances, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit for a project with an underlying zone of HR, in the case of Planned Unit development with an underlying zone of HR. 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.

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 the phasing requirements during the project approval process.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3030. - Price.

The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows:

1. The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council;
2. The initial price does not include the cost of land, profit, or marketing costs;
3. Each BMP unit will be subjected to recorded title restrictions concerning manner of fixture sales, occupancy and leasing;
4. Each buyer of a BMP unit must agree to sell the unit to a moderate or low income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit;
5. The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council;
6. If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5); and
7. The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3035. - Project denial.

If an applicant for zoning approval declines to provide BMP units required by ordinance, the zoning approval shall be denied.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3040. - Administration.

The Council shall adopt by resolution regulations concerning all aspects of the BMP program, including the elements of location of the units, price, buyer eligibility standards, rent, the length of the period during which a unit will be subject to BMP restrictions, the form of recorded instruments and any other matter consistent with the provisions of this section.

(Ord. No. 2181, § III, 10-19-09)

SECTION II

With respect to compliance with the California Environmental Quality Act (CEQA) and General Plan, the Town Council finds as follows:

- A. These Town Code amendments are exempt from review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the amendments to the Town Code would have a significant effect on the environment; and
- B. The amendments to the Town Code are consistent with the General Plan.

SECTION III

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION IV

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

SECTION V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 6th day of October 2020 , and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the ____ day of ____ 20 . This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

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

DATE: _____

RESOLUTION 2020-

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

Draft Resolution to
be modified by Town
Council deliberations
and direction.

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).

ATTACHMENT 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; ~~or~~
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:

Number of BMP units = (.225 x 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 costss shall include the following factors:

1. 1. Unit price;
2. 2. Current lending rates;
3. 3. Estimated property taxes;
4. 4. Estimated homeowner's private mortgage insurance (PMI) costs;
5. Utility assumption;
6. Homeowners' association fees, if applicable; and
7. 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.

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 bone 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 sixty percent (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 units Sales 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.

1. 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

1. 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.

VI4. 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 CMI 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

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

$4 \text{ months} + 12 \text{ months} = 16 \text{ months}$

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

$\$4,375 \times 12 = \$52,500$ (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:

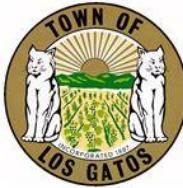
Adjusted income from last year's income tax return: \$50,000

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)

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**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 08/12/2020

ITEM NO: 2

DATE: August 5, 2020

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Forward a Recommendation to the Town Council for Approval of Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program, Town Wide. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos

RECOMMENDATION:

Forward a recommendation to the Town Council for approval of amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding the Below Market Price (BMP) Program.

CEQA:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that this project will have a significant effect on the environment.

FINDINGS:

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Exempt, Section 15061(b)(3);
- The amendments to Chapter 29 of the Town Code are consistent with the General Plan; and
- The modifications to the BMP Housing Program and Guidelines are consistent with the General Plan.

PREPARED BY: JOCELYN SHOOPMAN
Associate Planner

Reviewed by: Planning Manager and Community Development Director

BACKGROUND:

The Town first adopted BMP regulations in 1979 to provide the Town with a supply of affordable housing. The BMP regulations have been modified over the years since they were first adopted, with the most recent modifications to the regulations occurring in 2009.

The Town's BMP regulations have resulted in a current inventory of 55 for sale BMP units and 119 rental BMP units. The Town's administrator of the BMP Housing Program, Hello Housing, manages the daily operations of the program in partnership with the Town.

At the request of a previous Mayor, the discussion of BMP regulations was placed on the March 5, 2019 Town Council agenda. At the March 5, 2019 meeting, the Town Council discussed the matter and forwarded the item to the Policy Committee for review and recommendations.

On April 9, 2019, August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020, the Town Council Policy Committee considered potential amendments to the Town Code regarding BMP regulations and modifications to the BMP Housing Program Guidelines.

On January 28, 2020, the Policy Committee recommended staff bring forward amendments to Chapter 29 of the Town Code regarding BMP regulations and modifications to the BMP Housing Program Guidelines for consideration by the Planning Commission and the Town Council to increase the number of BMP units and decrease the opportunities to pay in-lieu fees, resulting in the construction of more on-site BMP units for development projects. Exhibit 2 contains the Town Council minutes for the March 5, 2019 meeting, and Exhibits 3 through 7 contain the Policy Committee minutes for the April 9, 2019, August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020 meetings.

DISCUSSION:

Division 6 of Chapter 29 of the Town Code contains the Town's BMP Program.

A. **Existing Town Code**

Existing Town Code Section 29.10.3015 discusses the application of the Ordinance on development projects that are subject to the BMP Program. Section 29.10.3015 currently states:

This division shall apply to all multiple-family dwelling projects, residential condominium projects, condominium conversions, and to all residential planned development projects (division 2 of article VIII of this chapter) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings. Projects in the R-1 and HR zones are excepted from BMP participation. The exception does not apply if the

DISCUSSION (continued):

project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

Existing Town Code Section 29.10.3025 discusses the scope of projects that are subject to the BMP Program. Section 29.10.3025 currently states:

The Below Market Price Program requirements shall apply to all residential 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, or
4. Conversion of non-residential use to residential use.

Planned development with an underlying zone of HR shall only be required to pay an in-lieu fee as established by a separate resolution.

The residential developments consisting of five (5) or more units are required to provide the following number of BMP units:

1. Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units.
2. Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:
Number of BMP units = .225 (total # of market rate units) - 2.5
3. All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units.
4. Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number.
5. The Town, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit in the case of Planned Unit development with an underlying zone of HR. 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

DISCUSSION (continued):

applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

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 the phasing requirements during the project approval process.

B. Proposed Amendments

Based on the direction provided by the Policy Committee, staff has prepared a Draft Ordinance implementing the amendments (Exhibit 8), for the Planning Commission's consideration. The potential amendments, shown in ~~strike through~~ and underline font in Exhibit 8, would make the following substantive changes:

1. Remove projects in the R-1 and HR zones from being exempt from BMP participation; and
2. Remove planned development projects with an underlying zone of HR from only being required to pay an in-lieu fee.

C. Existing Below Market Price Housing Program Guidelines

The BMP Housing Program and Guidelines were adopted to provide the Town of Los Gatos with a supply of affordable housing. The BMP Housing Program and Guidelines detail the BMP housing requirements for residential developments, including the processes for purchasing a for sale BMP unit and renting a rental BMP unit.

D. Proposed Modifications

Based on the direction provided by the Policy Committee, staff has prepared modifications to the BMP Housing Program and Guidelines (Exhibit 9), for the Planning Commission's consideration. The potential modifications, shown in ~~strike through~~ and underline font in Exhibit 9, with additional modifications proposed by Hello Housing shown in red ~~strike through~~ and underline font, would make the following substantive changes:

1. Remove reference to the Los Gatos Redevelopment Agency or Community Benefit requirements;
2. Remove projects in the R-1 and HR zones from being exempt from BMP participation;

DISCUSSION (continued):

3. Remove planned development projects with an underlying zone of HR from only being required to pay an in-lieu fee;
4. Modify the language regarding the size of BMP units to allow for greater flexibility;
5. Modify the language regarding the parking requirements for BMP units to allow for a reduction in parking as determined by the deciding body;
6. Modify the Median Family Income (MFI) for owner occupied and rental units from 80 to 100 percent (current parameters), to 80 to 120 percent; and
7. Additional information and clarification for implementation of the BMP Program.

PUBLIC COMMENTS:

Public comments received by 11:00 a.m., Friday, August 7, 2020 are included as Exhibit 10.

CONCLUSION:

A. Recommendation

Based on the direction of the Town Council Policy Committee, staff recommends that the Planning Commission review the information included in the staff report and forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance and the modifications proposed to the BMP Housing Program and Guidelines. The Commission should also include any comments or recommended changes in taking the following actions:

1. Make the finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Exhibit 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Exhibit 1);
3. Make the required finding that the modifications to the BMP Housing Program and Guidelines are consistent with the General Plan (Exhibit 1);
4. Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance (Exhibit 8); and
5. Forward a recommendation to the Town Council for approval of the proposed modifications to the BMP Housing Program and Guidelines (Exhibit 9).

CONCLUSION (continued):

B. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the Draft Ordinance and proposed modifications to the BMP Housing Program and Guidelines with modifications; or
2. Forward a recommendation to the Town Council for denial of the Draft Ordinance and proposed modifications to the BMP Housing Program and Guidelines; or
3. Continue the matter to a date certain with specific direction.

EXHIBITS:

1. Required Findings
2. Town Council Minutes, March 5, 2019
3. Town Council Policy Committee Minutes, April 9, 2019
4. Town Council Policy Committee Minutes, August 27, 2019
5. Town Council Policy Committee Minutes, September 24, 2019
6. Town Council Policy Committee Minutes, November 25, 2019
7. Town Council Policy Committee Minutes, January 28, 2020
8. Draft Ordinance
9. Draft Modifications to the BMP Housing Program and Guidelines
10. Public comments received by 11:00 a.m., Friday, August 7, 2020

PLANNING COMMISSION – August 12, 2020
REQUIRED FINDINGS FOR:

Town Code Amendment Application A-20-004

Consider amendments to Chapter 29 of the Town Code regarding the Below Market Price Program and proposed modifications to the Below Market Price Housing Program and Guidelines.

FINDINGS

Required Findings for CEQA:

- It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act, Section 15061 (b)(3).

Required Findings for General Plan:

- The proposed amendments to Chapter 29 of the Town Code are consistent with the General Plan.
- The proposed modifications to the BMP Housing Program and Guidelines are consistent with the General Plan.

EXHIBIT 1

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**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 03/19/2019

ITEM NO: 1

**MINUTES OF THE TOWN COUNCIL MEETING
MARCH 5, 2019**

The Town Council of the Town of Los Gatos conducted a Regular Meeting on Tuesday, March 5, 2019, at 7:00 p.m.

MEETING CALLED TO ORDER AT 7:04 P.M.

ROLL CALL

Present: Mayor Steven Leonidis, Vice Mayor Marcia Jensen, Council Member Rob Rennie, Council Member Marico Sayoc, Council Member Barbara Spector.

Absent: None

PLEDGE OF ALLEGIANCE

John Lochner led the Pledge of Allegiance. The audience was invited to participate.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

1. Approve Council minutes of February 19, 2019.
2. Authorize the Town Manager to negotiate and execute an agreement with the City of Campbell for the pavement resurfacing and cost sharing of dual jurisdiction street sections in a form acceptable to the Town Attorney.
3. Authorize the Town Manager to execute a grant agreement with the Los Gatos Chamber of Commerce for partial funding in the amount of \$22,000 for a consultant to assist with the formation of a Los Gatos Property Business Improvement District (PBID).

MOTION: **Motion by Vice Mayor Jensen to approve the Consent Items. Seconded by Council Member Rennie.**

VOTE: **Motion passed unanimously.**

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

4. Provide direction on potential amendments to the Town's Below Market Price (BMP) regulations.

Joel Paulson, Community Development Director, presented the staff report.

Other Business Item #4 – continued

Opened and closed Public Comment.

Council discussed the matter.

MOTION: **Motion by Mayor Leonardis** to forward the item to the Policy Committee for review with the ideas provided by the Town Council and best practices of other communities and return to Council with recommendations. **Seconded by Vice Mayor Jensen.**

VOTE: **Motion passed unanimously.**

5. Provide direction regarding potential Town Council Member term limits.

Laurel Prevetti, Town Manager, presented the staff report.

Opened Public Comment.

John Shepardson

- Commented on the issue.

Closed Public Comment.

Council discussed the matter.

MOTION: **Motion by Vice Mayor Jensen** to table the issue. **Seconded by Council Member Rennie.**

VOTE: **Motion passed 4/1. Council Member Sayoc voting no.**

PUBLIC HEARINGS

6. Town Code Amendment Application A-18-002. Project Location: Townwide. Applicant: Town of Los Gatos.

Consider amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding shared parking.

Azhar Khan, Assistant Planner, presented the staff report.

Opened and closed Public Comment.

Public Hearing Item #6 – continued

Council discussed the matter.

MOTION: **Motion by Vice Mayor Jensen** to introduce an Ordinance (Attachment 4), by title only, effecting amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding shared parking. **Seconded by Council Member Sayoc.**

VOTE: **Motion passed unanimously.**

The Town Clerk read the title of the ordinance.

OTHER BUSINESS

7. Adopt two resolutions related to business streamlining opportunities that reduce the timeline and cost of specific Town processes:
 - a. A resolution suspending Ordinance 2021 and modifying the assignment of duties for new conditional use permits for restaurants to the Development Review Committee until December 31, 2019; **RESOLUTION 2019-008** and
 - b. Adopt a resolution modifying the assignment of duties for minor exterior alterations on commercial buildings to be processed with a building permit until December 31, 2019.
RESOLUTION 2019-009

Monica Renn, Economic Vitality Manager, presented the staff report.

Opened Public Comment.

John Shepardson

- Commented in support of the modifications.

Closed Public Comment.

Council discussed the matter.

MOTION: **Motion by Vice Mayor Jensen** to adopt the staff recommendation contained in the staff report. **Seconded by Council Member Sayoc.**

VOTE: **Motion passed 4/1. Council Member Rennie voting no.**

COUNCIL/TOWN MANAGER REPORTS

Council Matters

- Council Member Sayoc stated she performed a ribbon cutting for EQ1 Real Estate, she attended the Regional Economic Forum with Mayor Leonardis, and she attended the Police Foundation Ball.
- Council Member Spector stated she attended the Council Policy Committee meeting and the business brokers breakfast hosted by the Town.
- Mayor Leonardis stated he attended the West Valley Mayors and Managers meeting, Senator Beall's Emergency Preparedness Pancake Breakfast, the Regional Economic Forum with Council Member Sayoc, the business brokers breakfast with all Council Members, and performed a ribbon cutting for Boulevard Bites and Brews.
- Vice Mayor Jensen stated she attended the Council Policy Committee meeting, the business brokers breakfast, and performed a ribbon cutting for Lululemon.
- Council Member Rennie stated he performed a ribbon cutting for Jewelry Sky Diamond and attended the Boulevard Bites and Brews ribbon cutting, he attended the Valley Transportation Authority (VTA) Board Workshop, the VTA Congestion Management Subcommittee meeting, the VTA Capital Projects Oversight Committee meeting, the Silicon Valley Clean Energy Authority (SVCEA) Workshop, and the business brokers breakfast.

Manager Matters

- Announced Adult Commissioner mid-year recruitment has begun, applications are due April 5, 2019, 4:00 p.m.
- Announced the annual Youth Commissioner recruitment has also begun and applications are due May 3, 2019, 4:00 p.m.

ADJOURNMENT

The meeting adjourned at 8:15 p.m.

Attest:

/s/ Shelley Neis, Town Clerk



**TOWN OF LOS GATOS
TOWN COUNCIL
POLICY COMMITTEE**

MEETING DATE: 05/28/2019

ITEM NO: 1

**MINUTES OF THE SPECIAL TOWN COUNCIL POLICY COMMITTEE MEETING
APRIL 9, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a special meeting on Tuesday, April 9, at 5:00 p.m.

MEETING CALLED TO ORDER

ROLL CALL

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Rob Schultz, Town Attorney; Joel Paulson, Community Development Director; Laurel Prevetti, Town Manager; Arn Andrews, Assistant Town Manager.

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

1. Approval of the February 26, 2019 Council Policy Committee Minutes.

Approved.

2. Provide direction on potential demolition regulation modifications.

Joel Paulson, Community Development Director, presented the staff report.

Bess Weirsema, Studio 3

- Reported that the professional design community is in full support of the staff recommended changes. Suggested that some additional definition of what counts towards the 50% exterior wall calculation would be helpful. Supported the in-kind replacement standard if it enhances the structural integrity of the building and aligns better with existing building standards.

After discussion, the Committee directed staff to forward the recommended Town Code Amendments for the demolition regulation modifications (Attachment 2 of the staff report) to the Planning Commission for review. In addition, review by the Historic Preservation Committee is preferable if scheduling permits.

SUBJECT: MINUTES OF THE SPECIAL TOWN COUNCIL POLICY COMMITTEE MEETING OF
APRIL 9, 2019
DATE: MAY 28, 2019

3. Provide direction on potential amendments to the Town's Below Market Price regulations.

Joel Paulson, Community Development Director, presented the staff report.

Natalie Ladd, BMP owner

- Disagreed with items 1, 2, and 5 from Attachment 5. Suggested that other communities have ownership programs and market rate resale options.

After discussion, the Committee asked staff to review elements of BMP regulations in other communities, review the Town's prior housing affordability plan, explore residential linkage fees, and provide options for amending the Town's BMP regulations including: potential lowering of threshold for requiring BMP units, greater flexibility in unit size and types, a potential plan for use of the Town's accumulated and future BMP in-lieu fees.

4. Provide direction on potential amendments to the Town Agenda Format and Rules Policy regarding time limits for applicant and appellant presentations and rebuttals.

Laurel Prevetti, Town Manager, presented the staff report.

After discussion, the Committee unanimously approved a motion to modify the Town Agenda Format and Rules Policy regarding Public Hearings. The section should be modified to reflect that when there is an appeal, the appellant shall be provided an initial ten (10) minutes and subsequent five (5) minute rebuttal. All other speakers shall be provided three (3) minutes. The Town Attorney expressed concerns about the modification and the Committee asked that he provide case law when the item goes to Council.

ADJOURNMENT

The meeting adjourned at 6:10 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the April 9, 2019 meeting as approved by the Council Policy Committee.

/s/ Arn Andrews, Assistant Town Manager



**TOWN OF LOS GATOS
TOWN COUNCIL
POLICY COMMITTEE**

MEETING DATE: 09/24/2019

**Minutes of the Regular Town Council Policy Committee Meeting
August 27, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, August 27, 2019, at 5:00 p.m.

MEETING CALLED TO ORDER AT 5:00 P.M.

ROLL CALL

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Ann Andrews, Assistant Town Manager; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Shelley Neis, Clerk Administrator; Michelle Radcliffe, Deputy Clerk; Jocelyn Shoopman, Associate Planner; Holly Zappala, Management Analyst.

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

1. Approval of the July 23, 2019 Council Policy Committee Minutes.

Approved with one modification.

2. Review and Provide Direction on Proposed Modifications to the Commission Appointment Policy.

Shelley Neis, Clerk Administrator, presented the staff report.

After discussion, the Committee agreed to forward a recommendation to the Town Council to amend the Commission Appointment Policy to allow applicants to apply for more than one Commission at a time.

3. Discuss and Provide Direction on the Land Use Appeal Process.

After continuing its discussion from prior meetings, the Committee asked staff to return to with revised language reflecting the following two options for the land use appeal process:

PAGE 2 OF 2

SUBJECT: Minutes of the Regular Town Council Policy Committee Meeting of August 27, 2019

DATE: September 24, 2019

- The Town Council may consider additional findings/information as part of the land use decision appeal; and
- The appeal is returned to the Planning Commission if the Town Council grants the appeal based on information not presented to the Planning Commission.

The Committee asked that the revised language be simple, easy to understand, and clear about the Council's full discretion to decide the matter.

The Committee also requested that staff create a brochure to provide to appellants with information about filing an appeal, including frequently asked questions, deadlines, and options for withdrawal and refunds.

The Committee remained in agreement that the land use appellant has the responsibility ("burden of proof") of providing information to support a finding and not the Town Council.

4. Provide Direction on Potential Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Below Market Price Regulations and Options for the Use of Below Market Price In-Lieu Fees.

Jocelyn Shoopman, Associate Planner, presented the staff report.

After discussion, the Committee asked staff to return to the Committee with options for potential uses of the existing Below Market Price (BMP) in-lieu fees, and alternatives to modify the BMP program consistent with the goals of increasing the number of BMPs in the Town, decreasing the number of in-lieu fees collected, and keeping BMPs on-site when possible.

ADJOURNMENT

The meeting adjourned at 6:15 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the August 27, 2019 meeting as approved by the Town Council Policy Committee.

/s/Holly Zappala, Management Analyst



**TOWN OF LOS GATOS
TOWN COUNCIL
POLICY COMMITTEE**

MEETING DATE: 10/22/2019

**Minutes of the Regular Town Council Policy Committee Meeting
September 24, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, September 24, 2019, at 5:00 p.m.

MEETING CALLED TO ORDER AT 5:00 P.M.

ROLL CALL

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Lisa Petersen, Town Engineer; Holly Zappala, Management Analyst.

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

1. Approval of the August 27, 2019 Council Policy Committee Minutes.

Approved.

2. Discuss and Provide Direction on the Land Use Appeal Process.

After continuing the discussion from prior meetings, the Committee asked staff to send the Committee via email revised language reflecting the following two options for the land use appeal process:

- The Town Council may consider additional findings/information as part of the land use decision appeal; and
- The appeal is returned to the Planning Commission if the Town Council grants the appeal based on information not presented to the Planning Commission.

Upon approval of the emailed language, the Committee agreed to forward both options to the Town Council for discussion and decision.

SUBJECT: Minutes of the Regular Town Council Policy Committee Meeting of September 24, 2019
DATE: October 22, 2019

3. Provide Direction on Potential Amendments to the Town Code Regarding Right of Way Dedication, Installation of Curbs, Gutters and Sidewalks, and Undergrounding of Utilities.

After discussion, the Committee agreed to forward a recommendation to adopt the proposed amendments to the Town Council with modifications to the language.

4. Provide direction on potential amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding below market price regulations and options for the use of below market price in-lieu fees.

After discussion, the Committee asked staff to send the Committee via email revised language reflecting a goal of below market price units seamlessly integrating into the rest of the development. Upon approval of the emailed language, the Committee agreed to forward a recommendation to adopt the proposed amendment to the Town Council.

5. Discuss and Provide Direction on a Planning Grants Program Application.

Sally Zarnowitz, Planning Manager, presented the staff report.

After discussion, the Committee agreed to forward a recommendation to the Town Council to apply for the Planning Grants Program for implementation of qualifying action items in the current Housing Element of the General Plan. The Committee asked staff to include those items as an attachment to the Town Council report.

ADJOURNMENT

The meeting adjourned at 6:18 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the September 24, 2019 meeting as approved by the Town Council Policy Committee.

/s/Holly Zappala, Management Analyst



**TOWN OF LOS GATOS
TOWN COUNCIL
POLICY COMMITTEE**

MEETING DATE: 12/10/2019

ITEM NO: 1

**Minutes of the Special Town Council Policy Committee Meeting
November 25, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a special meeting on Monday, November 25, 2019, at 4:00 p.m.

MEETING CALLED TO ORDER AT 4:00 P.M.

ROLL CALL

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Holly Zappala, Management Analyst.

CONSENT ITEMS

1. Approve the Draft Minutes of October 22, 2019.

Approved.

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

Mayor Jensen requested Item 3 be reviewed first.

3. Discuss and Provide Direction on Potential Outdoor Lighting Regulation Modifications.

Joel Paulson, Community Development Director, presented the staff report.

After discussion, the Committee asked staff to return to the Committee with revised proposed lighting regulations, similar to the City of Campbell's Lighting Design Standards, including the following considerations:

- Regulate lighting by zone or district
- Distinguish between permanent and temporary lighting
- Eliminate vague language

SUBJECT: Minutes of the Regular Town Council Policy Committee Meeting of November 25, 2019
DATE: December 10, 2019

- Update terminology to include modern types of signs and eliminate obsolete references
- Maintain Hillside restrictions and adjust language to ensure enforceability
- Reduce restrictions on commercial signage
- Allow projected wall art as part of a Special Event Permit
- Consider allowing string lighting on private property on a permanent basis

2. Provide Direction on Potential Modifications to the Below Market Price Housing Program Regulations.

Joel Paulson, Community Development Director, presented the staff report.

Sarah Chaffin

-Commented that the Town's Below Market Price Housing Guidelines should allow eligibility for households who earn up to 120% or 150% of the Area Median Income (AMI) to accommodate people in households unable to afford housing in Los Gatos at market rate, but with incomes too high to qualify at the current 80% AMI eligibility limit (the "missing middle").

After discussion, the Committee asked staff to return to the Committee with revised proposed Below Market Price Housing Program Guidelines, including increasing the eligibility limit to 120% AMI, adjusting the requirements for purchases and rentals to correspond with each other, and making other revisions as identified by Committee members.

ADJOURNMENT

The meeting adjourned at 5:04 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the November 25, 2019 meeting as approved by the Town Council Policy Committee.

/s/ Holly Zappala, Management Analyst



**TOWN OF LOS GATOS
TOWN COUNCIL
POLICY COMMITTEE**

MEETING DATE: 2/25/2020

ITEM NO: 1

DRAFT

**Minutes of the Town Council Policy Committee Regular Meeting
January 28, 2020**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, January 28, 2020, at 5:00 p.m.

MEETING CALLED TO ORDER AT 5:00 P.M.

ROLL CALL

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Monica Renn, Economic Vitality Manager; Jennifer Armer, Senior Planner; Holly Zappala, Management Analyst.

CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)

- 1. Approve the Draft Minutes of December 10, 2019.**
- 2. Approve the Town Council Policy Committee Meeting Schedule for 2020.**

Approved.

VERBAL COMMUNICATIONS

None.

OTHER BUSINESS

- 3. Discuss and Provide Direction on Potential Modifications to the Below Market Price Housing Program Regulations.**

Joel Paulson, Community Development Director, presented the staff report.

After discussion, the Committee asked staff to return to the Committee with revised proposed Town Code amendments and Below Market Price Housing (BMP) Guidelines, including increasing the household income requirement for BMP ownership to 120% of the Median Family Income to match the BMP rental requirement. The Committee requested clarification on questions regarding requiring BMPs in continuum care facilities and

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of January 28, 2020
DATE: February 25, 2020

assigning preferences to applicants. The Committee agreed that the Town should modify the Code and BMP Guidelines, while the Town's BMP housing provider, currently Hello Housing, may contribute an administrative appendix to the Guidelines.

4. Discuss and Provide Direction on Potential Outdoor Lighting Regulation Modifications.

Jennifer Armer, Senior Planner, was present to address questions.

After discussion, the Committee asked staff to send the Committee via email revised language, including consistent wording in the proposed Ordinance and the Residential Design Guidelines, and removal of the distinction of "holiday" or "patio" lights. Upon approval of the emailed language, the Committee agreed to forward a recommendation to the Planning Commission to approve the proposed modifications.

5. Discuss the Town's Interpretation of "Used Vehicles" in the Town Code and Determine if an Exemption for Indoor Showrooms is Appropriate.

Monica Renn, Economic Vitality Manager, presented the staff report.

Rodney Butterfield

-Commented that his company sells used cars, and they are high-end, restored vintage and sports racing cars. His customer base is collectors. He said that his showrooms look more like an antique art gallery as opposed to a used car lot.

John Eichinger

-Commented that he believes the addition of Mr. Butterfield's business would be an enhancement to downtown Los Gatos.

After discussion, the Committee agreed to forward a recommendation to the Planning Commission to amend Town Code Section 29.20.185, Table of Conditional Uses Section 7 to eliminate the word "new" from section (a) and entirely eliminate section (b) requiring used vehicle sales and rentals to be incidental to new vehicle sales.

6. Identify Future Work Plan Items for the Council Policy Committee.

Holly Zappala, Management Analyst, presented the staff report.

David Weissman

-Commented that the Town should revise its defensible space requirements in conjunction with the Hillside Development Standards and Guidelines Visibility Analysis as the two are tied together in practice.

PAGE 3 OF 3

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of January 28, 2020

DATE: February 25, 2020

After discussion, the Committee agreed that the potential items for 2020 recommended by staff be added to the work plan for the Policy Committee in 2020 and each item be examined as it aligns with the Town's Strategic Priorities.

ADJOURNMENT

The meeting adjourned at 6:07 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the January 28, 2020 meeting as approved by the Town Council Policy Committee.

Holly Zappala, Management Analyst

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DIVISION 6. - HOUSING ASSISTANCE PROGRAM

Sec. 29.10.3000. - Intent.

This division is adopted to meet housing needs shown in the housing element of the general plan.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3005. - Below market price program—~~E~~ established.

This division establishes the below market price program (BMP).

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3010. - ~~Same Program~~ intent.

The below market price (BMP) program requires the provision of dwellings that persons and families of moderate and low income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate income.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3015. - Application.

This division shall apply to all residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and ~~to all~~ residential planned development projects (~~of~~ Division 2 of ~~a~~ Article VIII of this chapter) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings. ~~Projects in the R-1 and HR zones are excepted from BMP participation. The exception does not apply if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.~~

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3020. - Definitions.

For the purposes of this division the following definitions shall apply:

BMP dwelling means any residential dwelling unit designated for very low, low, and moderate income persons and families under the rules of this section.

Person of moderate income means one whose income falls within the range specified by the Town Council in the resolution authorized by section 29.10.3040.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3025. - Scope.

The Below Market Price 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, ~~or~~; and
4. Conversion of non-residential use to residential use.

~~Planned development with an underlying zone of HR shall only be required to pay an in-lieu fee as established by a separate resolution.~~

The residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects developments consisting of five that include (5) or more residential units are required to provide the following number of BMP units:

1. Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units, ~~;~~
2. Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:

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

3. All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units, ~~;~~
4. Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number, ~~;~~ and
5. The Town, in limited circumstances, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit for a project with an underlying zone of HR, in the case of Planned Unit development with an underlying zone of HR. 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.

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 the phasing requirements during the project approval process.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3030. – Price.

The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows:

1. The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council.
2. The initial price does not include the cost of land, profit, or marketing costs.
3. Each BMP unit will be subjected to recorded title restrictions concerning manner of fixture sales, occupancy and leasing.
4. Each buyer of a BMP unit must agree to sell the unit to a moderate income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit.
5. The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council.
6. If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5).
7. The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3035. – Project denial.

If an applicant for zoning approval declines to provide BMP units required by ordinance, the zoning approval shall be denied.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3040. – Administration.

The Council shall adopt by resolution regulations concerning all aspects of the BMP program, including the elements of location of the units, price, buyer eligibility standards, rent, the length of the period during which a unit will be subject to BMP restrictions, the form of recorded instruments and any other matter consistent with the provisions of this section.

(Ord. No. 2181, § III, 10-19-09)

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

EXHIBIT 9

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.;

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.
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.
3. 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. Unit price;
2. 2. Current lending rates;
3. 3. Estimated property taxes;
4. 4. Estimated homeowner's private mortgage insurance (PMI) costs;
5. Utility assumption;
6. Homeowners' association fees, if applicable; and
7. 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. f. 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 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.

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 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 sixty percent (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 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 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.
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 units 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

- 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.

- 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 = $(\$52,500 + \$75,700) \text{ divided by } 2$
 $= \$64,100$

Average MFI X Multiplier = Initial Sales Price

- 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:

- 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, 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 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 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 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 CMI 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 x 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

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

$4 \text{ months} + 12 \text{ months} = 16 \text{ months}$

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

$\$4,375 \times 12 = \$52,500$ (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)

8/5/2020

To: Planning Commission

Fr: Sarah Chaffin

Re: Modification to Town MFI (Median Family Income) for Rental Units to 120% of AMI

Dear Commissioners,

Thank you for the opportunity to weigh in on the possible modification to the Town BMP guidelines for rental housing.

Currently, the Town only goes to a maximum of 80% to 100% of AMI for BMP rental guidelines. This is well below the state RNHA guideline of 120% of AMI. The net effect of the current policy is that essential workers like teachers & school employees, police dispatchers, nursing assistants and other community helpers make too much money to qualify for our BMP rental guidelines but not enough money to live in our community.

I would like to recommend that the Planning Commission supports the Council Policy Committee's recommendation to modify the Median Family Income for owner occupied and rental units to up to 120% of AMI.

This would be in line with state RNHA guidelines and help our valuable essential workers live where they work.

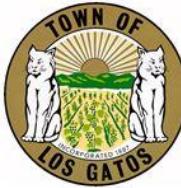
Thank you for your considerations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah Chaffin".

Sarah Chaffin

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**TOWN OF LOS GATOS
PLANNING COMMISSION
REPORT**

MEETING DATE: 08/12/2020

ITEM NO: 2

DESK ITEM

DATE: August 12, 2020
TO: Planning Commission
FROM: Joel Paulson, Community Development Director
SUBJECT: Forward a Recommendation to the Town Council for Approval of Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program, Town Wide. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos

REMARKS:

Exhibit 11 includes comments from a Planning Commissioner.

EXHIBITS:

Previously received with August 12, 2020 Staff Report:

1. Required Findings
2. Town Council Minutes, March 5, 2019
3. Town Council Policy Committee Minutes, April 9, 2019
4. Town Council Policy Committee Minutes, August 27, 2019
5. Town Council Policy Committee Minutes, September 24, 2019
6. Town Council Policy Committee Minutes, November 25, 2019
7. Town Council Policy Committee Minutes, January 28, 2020
8. Draft Ordinance
9. Draft Modifications to the BMP Housing Program and Guidelines
10. Public comments received by 11:00 a.m., Friday, August 7, 2020

Received with this Desk Item:

11. Comments from a Planning Commissioner

PREPARED BY: JOCELYN SHOOPMAN
Associate Planner

Reviewed by: Planning Manager and Community Development Director

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From: Jeffrey Barnett
Sent: Tuesday, August 11, 2020 4:48 PM
To: Joel Paulson <jpaulson@losgatosca.gov>
Subject: Planning Commission Meeting 8.12.20 Item 2

Good afternoon, Joel.

Below are my comments concerning the proposed changes to the Code and the Guidelines related to the BMP Program. The proposed changes and my comments (in brackets) are in red font.

Would you kindly distribute this as a desk item.

Sec. 29.10.3010. – Program —Intent. The below market price (BMP) program requires the provision of dwellings that persons and families of moderate and low income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate **and low** income. [this harmonizes the statute internally and also with the Guidelines; the missing language appears to be an oversight.]

Sec. 29.10.3030. - Price. The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows: 1. The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council. 2. The initial price does not include the cost of land, profit, or marketing costs. 3. Each BMP unit will be subjected to recorded title restrictions concerning manner of fixture sales, occupancy and leasing. 4. Each buyer of a BMP unit must agree to sell the unit to a moderate **or low** income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit. 5. The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council. 6. If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need

of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5). 7. The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical. [same comment]

Guidelines – Page 9 - 4. (b) ii

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 the **from the final date** for submitting a Town Eligibility Preapplication. [I do not understand the logic here. Should "from" be "to"?]

Guidelines -Page 10 (b) 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 the final date** for submitting a Town Eligibility Preapplication. [same issue here].

Guidelines – Page 11 (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.** [the timeline benchmarks may be too short].

Guidelines – Page 16 D a

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. [In the case of multifamily developments, such as condominiums and planned developments, there is no "apartment

owner", and any retained property manager for the common interest development is unlikely to accept this responsibility. The Town should be able to set the fair market rate in the event of a tenant's failure to timely submit a signed Occupancy Certification Form]

Guidelines – Page 17 6

6. Executed Lease Agreement and BMP Addendum: The apartment owner, property manager **or tenant** shall provide the Town or its designee with a copy of the executed lease agreement and BMP Addendum within five (5) business days of execution. [similar concern]

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A P P E A R A N C E S:

Los Gatos Planning Commissioners:	Melanie Hanssen, Chair Kathryn Janoff, Vice Chair Mary Badame Jeffrey Barnett Kendra Burch Matthew Hudes
Town Manager:	Laurel Prevetti
Community Development Director:	Joel Paulson
Town Attorney:	Robert Schultz
Transcribed by:	Vicki L. Blandin (619) 541-3405

ATTACHMENT 5

PROCEEDINGS:

CHAIR HANSEN: We will move on to the next item on the agenda, which is our public hearing, and that is Agenda Item #2 which is forwarding a recommendation to the Town Council for approval of amendments to Chapter 29, which is Zoning Regulations, of the Town Code regarding the Below Market Price, otherwise known as BMP, program. This applicability is town wide. The Town Code Application is A-20-004, and the Applicant is the Town of Los Gatos.

And I see Ms. Shoopman is our Staff person, so would you like to make a Staff Report?

JOCELYN SHOOPMAN: Good evening. On January 28th of this year the Policy Committee recommended amendments to Chapter 29 of the Town Code regarding BMP regulations as well as modification to the Town's BMP Housing Program guidelines with the intent to increase the number of BMP units by decreasing the opportunities to pay in lieu fees, resulting in the construction of more onsite BMP units for development projects.

The amendments as recommended by the Policy Committee also include modifications proposed by the Town's administrator of the BMP Housing Program, Hello Housing,

1 who manages the daily operations of the program in
2 partnership with the Town.

3 There is also a Desk Item for this evening that
4 includes comments made by a Planning Commissioner.

5 Otherwise, this completes Staff's report and we
6 are available for any questions.

7 CHAIR HANSEN: Thank you, Ms. Shoopman, and it
8 looks like Commissioner Hudes has a question for you. If
9 any other Commissioners have questions you can use the
10 raised hand feature or raise your hand and I will have you
11 speak. So, Commissioner Hudes.

12 COMMISSIONER HUDES: I just wanted to get a
13 little better understanding of how this fits with
14 affordable housing and the Town, and I think this might be
15 helpful not just to me but maybe to the public as well.

16 How does the BMP program relate to state housing
17 requirements, RHNA requirements, and if there's a state
18 program why do we have this? And what does it cost the
19 Town? The Town has, I believe, 174 units that have been
20 produced. Just some overall framing so we understand what
21 this BMP is about. Thank you.

22 JOEL PAULSON: Well, I'll give that a shot and
23 then if the Town Attorney or Ms. Shoopman has any
24 additional input.

1 Backing up to the state, our Housing Element
2 cycle gives each area or region a regional housing needs
3 allocation. From that there is a body—currently right now
4 there is a Housing Methodology Committee body—who is going
5 to determine how those numbers will be split up among the
6 jurisdictions in the Bay Area. The numbers that come from
7 that are in numerous categories, so there are above-
8 moderate units, which is normal market rate units; there
9 are moderate units, which is below market rate; and there
10 are also low; very-low; and extremely-low categories. Those
11 numbers, when they are provided to the Town, are also
12 designated as a specific affordability level.

14 So, that is the number of units in each of those
15 categories the Town is expected to plan for over the eight-
16 year housing (inaudible) cycles, so that's how that is
17 generally handled.

18 Cost-wise, our Hello Housing contracts, I believe
19 the base is \$70,000 approximately, and then it also has
20 additional fees that come in if they do work above and
21 beyond what's in the contract, including the resale of BMP
22 units; they handle that process as well. If you have any
23 other specific questions, I'd be happy to answer them as
24 well.

1 CHAIR HANSEN: So, Commissioner Hudes has more
2 questions.

3 COMMISSIONER HUDES: Just a follow up. We have
4 174 units that have come about in this program, I believe
5 some for sale and some rental, and this is a result of the
6 Town having this program and encouraging developers to
7 develop under it. What does it cost the Town in order to
8 get affordable housing in town?

9 JOEL PAULSON: I'm not sure I can quite follow
10 the question. The Town has had this ordinance in place, I
11 believe, since 1979, so when development that meets the
12 thresholds as they've evolved over the years, whether
13 that's a planned development or some other mechanism, once
14 they get over a certain number of units then they have to
15 provide Below Market Price units based on our ordinance.

16 A couple of other pieces of information.
17 Typically the for-sale units—I'll just give a hypothetical—
18 if you were required to do four BMP for-sale units then two
19 them would become moderate and two of them would become low
20 pursuant to our guidelines.

21 And in four rentals all the rentals are based on
22 the moderate-income level, so that's how the rental price
23 is set and every year the federal government provides those
24 rental rates for Santa Clara County.

COMMISSIONER HUDES: Just if I could follow up.
So, to get this program basically the Town provides some administration and there are some costs associated with that, but the bulk of what it costs, almost all of it, comes from developers, is that correct?

JOEL PAULSON: That's correct.

COMMISSIONER HUDES: Okay, thank you.

CHAIR HANSEN: Do any other Commissioners have questions for Staff?

TOWN ATTORNEY SCHULTZ: If I might?

CHAIR HANSEN: Go ahead. The Town Attorney has a comment.

14 TOWN ATTORNEY SCHULTZ: Let me just add that
15 while I think it is true that, yes, today almost all of it
16 comes from the development of projects that meet the
17 requirements to provide below market price housing, but if
18 you go through the historic of how we got to this issue of
19 providing for below market price housing a lot of that came
20 through the redevelopment agencies, and the money we got
21 through redevelopment, because a component of all the money
22 that we collected had to go towards affordable housing.

24 I'm not sure how much we have in that fund right
25 now but it's really still left over from the redevelopment
agency and it enabled us to buy certain properties like the

1 Dittos Lane that's right now going through a BMP program.
2 So, before we actually went and purchased property or do
3 public/private partnerships with different housing
4 advocates, that's kind of dried up because we don't have
5 that redevelopment money.

6 So, now we do primarily rely on it. That's how it
7 came back, if you go way back to the redevelopment
8 agencies.

9
10 CHAIR HANSEN: Okay. Thank you so much. I was
11 going to ask, it's sort of a question and a comment
12 combined. I had been involved on the Housing Element along
13 with a number of other Commissioners, the current Housing
14 Element is going from 2015 to 2023, and the issue with the
15 Housing Element has been that you plan for density in
16 certain locations in Town but it's incumbent upon
17 developers to make a proposal to build those units, and so
18 to me—and this is where my question comes in—it seems to me
19 that the Below Market Price Program is really the only way
20 we can be assured via our Town Code that when developers
21 come in that we can get at least a couple of affordable
22 units because they can offset their costs of the market
23 price units with the below market price units. Is that a
24 correct statement?
25

JOCELYN SHOOPMAN: I would say that it's correct in that this program relies on private developers who propose applications to the Town, that propose a certain amount of housing units, where then now these regulations we can put in place and we can ask for the below market rate units.

CHAIR HANSEN: So, it seems like it's been successful from the Town's perspective.

JOCELYN SHOOPMAN: I'll let Joel answer that, but I would think yes.

CHAIR HANSEN: All right, so that being the case is there anyone else that has questions of Staff? Did I see Commissioner Burch put her hand up? No. All right, well then we will now invite comments from members of the public. Do we have any members of the public that would like to speak on this item?

JOEL PAULSON: For the member of the public we now have two, and I see Heidi Owens' hand raised so I'm going to allow her to speak.

CHAIR HANSEN: Okay, Ms. Owens.

HEIDI OWENS: Hi, my question is if we can and why we don't align the Below Market Price Program with those different categories that you spoke about from the RHNA

1 numbers? Why don't we have an extremely-low-income
2 requirement, et cetera?

3 CHAIR HANSEN: Staff, you're probably the best
4 to be able to comment on this from the history perspective.

5 JOEL PAULSON: Thank you, and thank you for the
6 question. So, it is challenging enough for us to exact
7 moderate and low units out of developers to make that work.
8 Where you typically see the very-low and extremely-low
9 units, those are generally done in either partnerships, as
10 the Town Attorney mentioned before, public/private
11 partnerships, or by specifically affordable housing
12 developers who are looking to get tax credits for their
13 projects and that helps fund that as well.

15 It is very rare to see a just standard developer
16 come with either very-low or extremely-low units unless
17 you're talking about very extremely high-density projects
18 where there is a significant number of units which wouldn't
19 be probably viable in the Town, and then again with either
20 funds of a jurisdiction or the nonprofits who that's really
21 their business to create affordable housing and to be
22 competitive for those tax credits, they generally have to
23 get down into that very-low, extremely-low level to be
24 competitive with other projects vying for those credits as
25 well.

1 And I'm not sure if the Town Attorney has any
2 additional thoughts on that. Yeah, it looks like he
3 doesn't.

4 CHAIR HANSEN: I will jump in and say one thing
5 from the perspective of having sat on the Housing Element
6 Advisory Board. I remember very clearly that when we were
7 going through and trying to process our last RHNA that one
8 of the difficulties we had is I think it would have been a
9 desire of everyone to mandate more very, very low income,
10 but the feedback we got from the state, what I recall is
11 that we can't put a lot of restrictions on where they fall
12 in those buckets because the state views that as an
13 impediment to getting more housing built.

15 And, Mr. Paulson, if I'm incorrect let me know
16 but I remember that was kind of a big deal because we were
17 going through and saying why can't we force the issue a
18 little bit more but the answer was that's an impediment to
19 housing production, which is something the state doesn't
20 want.

21 JOEL PAULSON: Chair Hanssen, that's correct.
22 Again, they're always looking for jurisdictions to remove
23 barriers or impediments to housing production, so if we had
24 a program of that nature that looked at very-low or
25

1 extremely-low as requirements of some percentage, then that
2 would be challenging.

3 I would say just one more kind of historical
4 point that I'm trying to think, and there are probably very
5 few instances where it actually came to fruition. The Town
6 used to have a requirement for a community benefit, and so
7 what some projects would do is, even if they were only
8 required to do a moderate unit they might make that a low
9 unit as an additional community benefit or make it the
10 price point at a level lower than what would be required by
11 our code, so just a little additional information.

13 CHAIR HANSEN: Are there any other questions
14 from the public?

15 JOEL PAULSON: I do not see any other hands
16 raised. Give it a couple of seconds here. Seeing none, I
17 think we're ready to move on in discussion.

18 CHAIR HANSEN: All right, so thank you, Ms.
19 Owens, for your question and we will now close the public
20 portion of the hearing and ask if Commissioners have any
21 additional questions of Staff, wish to comment on the code
22 amendments, or introduce a motion for consideration by the
23 Commission?

24 It looks like we have a few hands up. I saw Vice
25 Chair Janoff and I saw Commissioner Hudes.

1 VICE CHAIR JANOFF: Thank you. Just a quick
2 clarification of the process. I've got four comments. Did
3 you want them at once? Well, three of them are questions,
4 one is a comment. You want them all at once or one at a
5 time, or how would you like to handle that?

6 CHAIR HANSEN: I think it's fine to go ahead and
7 make all your comments at one time because we want to make
8 sure that every commissioner has a chance to talk about any
9 questions or comments that they have, and then hopefully we
10 move forward to a motion.

11 VICE CHAIR JANOFF: Okay, great. So, just real
12 quickly then, as a matter of format there are a whole bunch
13 of lists of bulleted items or numbered items. The
14 penultimate item as the term "and" afterward, which to me
15 is an all-inclusive rather than these are items on a list,
16 so some of them are not appropriate, some of them might be
17 appropriate.

18 I'll just point out on page 33 there's a
19 disconnect between the list at the top of the page and the
20 list that follows subsequently; there is or isn't an "and".
21 And then I'll just refer to pages 42, 43, 49, 50, and 51 as
22 having similar lists that may be confusing or overly
23 restrictive.

1 My second comment is on page 47 there's an
2 example calculation regarding how to calculate the 80-
3 percent or 120-percent. We don't know what the assumed MFI
4 is and I think it would be clarifying for that number to be
5 included if it's just an example, so we know how the full
6 calculation is made.

7 Page 56, Item 3 says it requires the unit to
8 remain affordable for 30 years. I wasn't sure what that
9 restriction is. Is it a restriction on the loan or on the
10 rent? There's something confusing about that restriction.

11 Then finally page 55, Item 5, "Tenant rents and
12 incomes will be monitored annually." What happens if their
13 income goes up? To what end are they monitoring annually?

14 So just a question. I'm not sure if these need
15 discussion but just clarification, perhaps in the text.

16 CHAIR HANSEN: So, how do you want to handle
17 questions? And I know Commissioner Barnett had quite a
18 number of comments that were in the same vein about making
19 things more clear, and he actually had proposed new
20 language, so how does Staff want to handle that? Because at
21 the end of the day the action by the Commission will be
22 either a recommendation to forward this to Town Council, it
23 could have changes along with it, or we could say that it's
24 not ready for that, but usually in the past when we've done

1 this we pass along all the comments of the Commissioners
2 unless somebody disagrees. So, maybe Staff could help.

3 JOEL PAULSON: A couple of things. One is thank
4 you for the comments, Vice Chair; we'll take a look at
5 those and/ors.

6 To answer your last question, the guidelines
7 specifically talk about if you are in a rental unit and
8 your income goes up and you no longer qualify for the BMP
9 program, then what happens is you now have to pay full
10 market rate rental, and then the next unit that comes up
11 available for rent in that complex becomes a BMP for the
12 next person so that we always maintain the number.

14 And what I'll say is that it's not the same as
15 for-sale. So, you get into the program and you meet the
16 requirements and are successful in being selected and then
17 purchasing the BMP, your income can go up infinitely and we
18 don't obviously evict folks or make them sell the unit if
19 their income increases for for-sale.

20 VICE CHAIR JANOFF: Thank you for that.

21 CHAIR HANSEN: Just to jump in as a follow up,
22 and Commissioner Hudes had a question. But when they sell
23 the unit it says in the code that they're going to sell the
24 unit at a below market price.

25 JOEL PAULSON: That's true.

1 CHAIR HANSEN: Even if they're affordability of
2 paying their mortgage and stuff during the time they owned
3 it has changed, they still are bound to sell it as an
4 affordable unit, and it's got to be that unit that they're
5 in, right?

6 JOEL PAULSON: Correct.

7 CHAIR HANSEN: All right, so Commissioner Hudes,
8 go ahead.

9 COMMISSIONER HUDES: Thank you. First of all, I
10 think that the comments by Commissioner Barnett should be
11 part of whatever motion that we get to and so rather than
12 repeat them I'm going to go to some other questions. I was
13 kind of stumbling over the same things he carefully put
14 into his item. I did have a couple of questions that it
15 would be good to get a response on.

17 The first one is on page 8 in the last paragraph
18 where it talks about the employees working in town that
19 would be entitled to the program. We have very few
20 permanent employees these days at moderate- to low-income.
21 Many employers are keeping the hours of employees below 35
22 to avoid paying for healthcare. I had a couple of questions
23 about this because I think we're looking at a little bit of
24 a different workforce today. Are part-time workers who
25 might be working more than one job included? And I notice

1 that in the definitions there a definition of self-
2 employed, but I wonder in this section whether self-
3 employed and sort of gig economy workers would be included
4 as well? That's the first question I had.

5 JOEL PAULSON: Well, those are great questions.
6 Most of these modifications for processing those things is
7 really handled by Hello Housing, so what we'll do is we
8 will get that information and get it back to you. But we
9 also raised that issue as depending on the action of the
10 Planning Commission tonight and we can figure out how they
11 exactly define that and whether or not people who are part-
12 time maybe in Los Gatos and San Jose and Campbell or in
13 multiple jurisdictions, then how is that handled? As well
14 as the gig economy workers who may do work in town but they
15 do work all over the place. So, those are good questions
16 and we definitely can get an answer to that from Hello
17 Housing.

19 COMMISSIONER HUDES: Great, thank you. I had a
20 couple others. Should I keep going, Chair?

21 CHAIR HANSEN: Go ahead, because I don't see any
22 other Commissioners that had their hands up at the moment.

23 COMMISSIONER HUDES: Okay. So, this one is
24 probably the bigger thing I wanted to sort of get my head
25 around and that is we're raising the limit so I assume that

1 that will get more people into the pool, and I'm a bit
2 concerned about how do we protect the ability of the really
3 low-income folks to participate in this program if we're
4 pulling in a lot more folks? One of the ways, it seems, is
5 the point program. So, my first question on this is that
6 Item C on page 10, is that the only way that we
7 differentiate between the income of everyone who is jumping
8 into this pool, the 60-percent gets an extra point?

1 developers, some of the nonprofits, come in and have units
2 designated specifically for those categories, because then
3 what that does is that gets rid of everybody else who is
4 above and so that pool is on equal footing, because that's
5 what they're doing.

6 The Town Attorney has probably looked at this
7 more recently than I, but just as an example the 50 below
8 market rate units in the North Forty project, 49 of those
9 are either very-low or extremely-low, and I can't remember
10 if it's very-low and extremely or it's low and very-low,
11 and I think there's one moderate unit for the manager who
12 will be onsite. It allows more people to qualify up to the
13 120, and it really does, as Ms. Shoopman mentioned, kind of
14 gets us in alignment with how the state defines those
15 income categories.

16 CHAIR HANSEN: Go ahead, Commissioner Hudes.

17 COMMISSIONER HUDES: I just am raising this
18 because we think we're doing a good thing by opening the
19 pool to more people but since we have very few units that
20 actually come up we may be having the unintended
21 consequence of limiting the opportunities for the lowest
22 income people, and as you point out the issue isn't I don't
23 think so much with the purchase units but the predominance
24 is on the rental units. So, I don't know whether what I've

1 suggested would make sense or not, we could save that for
2 discussion, but I just am concerned about an unintended
3 consequence of opening the pool.

4 I had one more sort of real quick technical
5 point.

6 CHAIR HANSEN: Okay, go ahead.

7 COMMISSIONER HUDES: And that's on page 11, the
8 first paragraph, that sentence, it seems it might be more
9 straightforward to just say, "If an applicant twice refuses
10 to purchase an available unit they will be removed from the
11 current applicant pool." The way it's worded, especially as
12 it's been revised, is not so clear.

14 JOEL PAULSON: Okay, we can look at simplifying
15 that language.

16 COMMISSIONER HUDES: And that's all I had. Thank
17 you.

18 CHAIR HANSEN: If no other Commissioners had
19 questions, I had a couple questions. Let me just check; one
20 second.

21 First of all, I wanted to say after I ask my
22 other two questions I want to get some feedback from other
23 Commissioners on the issues that Commissioner Hudes raised,
24 which is is this the most equitable way of allocating those
25 below market price units and is it negatively affecting the

1 lower income people by raising the limit? So, I'm hoping
2 that some other Commissioners will have some comments on
3 that but I had two kind of quick questions.

4 I might not be interpreting this correctly but
5 whereas in the hillsides we might not have forced a below
6 market price unit, if I'm understanding this correctly like
7 the next time we see one of these eight-unit development
8 proposals in the hillsides that they're going to be
9 required to do at least one below market price unit, right?
10

11 JOCELYN SHOOPMAN: The previous language stated
12 that hillside projects shall only pay in lieu fees. That
13 language was struck out. It still leaves the possibility
14 for them to pay an in lieu fee if they can provide
15 justification that a BMP unit in that development would not
16 be viable.

17 CHAIR HANSEN: Okay. My next question was going
18 to kind of go along that vein. Generally when we've seen
19 these five- to eight-unit developments that we're talking
20 about \$3 and \$4 million houses, so I wasn't knowing how the
21 math would ever work when you have these \$3 and \$4 million
22 dollar houses to make it affordable for someone that's
23 making even 120-percent of the market income. So, I think I
24 understand the thing behind it.
25

1 But so the other thing that I noted is that the
2 in lieu fees, generally this proposed language is going to
3 make it more restrictive towards making a BMP versus having
4 the option of opting out based on paying in lieu fees, but
5 if you read the code, it's fine, but if you read the
6 document it sort of seemed like oh, well if you have any
7 problems regardless of whether you're in the hillsides or
8 not that you can get Town Council approval to do the in
9 lieu fees, and I just wondered if that was a good thing if
10 we're trying to make it tighter and get more BMPs versus
11 having people pay into in lieu fees? Is that going to be
12 tight enough?

14 JOCELYN SHOOPMAN: I'm sorry, so were you
15 referring to the language in the Town Code as not being in
16 line with the guidelines?

17 CHAIR HANSEN: Well, I might have interpreted it
18 incorrectly but the Town Code was pretty clear that that
19 was only for the hillsides where they could potentially do
20 in lieu fees, and as I was reading the guidelines it
21 sounded more open to me, so maybe I misinterpreted it. Let
22 me ask the clarifying question though. The intent is the
23 only people that can ask for in lieu fees are going to be
24 people that are developing in the hillsides, is that
25 correct?

1 JOEL PAULSON: I think you're looking at the Town
2 Code section which specifically talks about HR, and then on
3 pages 2 and 3 of the guidelines—and that's the number of
4 page, not the page in the PDF—they talk about HR only, or
5 residential projects conversion, and all developments with
6 five to nine units with an underlying of HR as well. So, it
7 looks like that's covered both on the code and the
8 guidelines. but we'll take another look at it as well prior
9 to getting it to Council just to confirm.
10

11 CHAIR HANSEN: Perfect. Okay. Now, Commissioner
12 Burch had her hand up.
13

14 COMMISSIONER BURCH: Thank you. I have a couple
15 of questions, if that's okay.
16

17 One item had to do with the section concerning
18 the resale of a below market home and my question was if
19 the property owners did some work on the house, an addition
20 or something that actually increased the value of the home,
21 before that is sold does the Town do an updated assessment
22 and then set the allowable resell value?
23

24 JOEL PAULSON: I'll jump in unless Ms. Shoopman
25 has something to say first, but generally what happens is
Hello Housing, there are specific calculations that are
used for upgrades, whether that's upgrading appliances,
upgrading finishes, things like that, adding air
26

1 conditioning if there wasn't air conditioning. And then
2 there is also a depreciation scale that they use, and so
3 they determine what if any value is still left depending on
4 how long ago those were installed and the cost of those
5 installations.

6 I am trying to recall, but I don't recall ever
7 having seeing an addition to a BMP. Typically what we get
8 is they replaced their carpet with hardwood, or they put in
9 air conditioning where they didn't have it, things like
10 that. But yes, there is some flexibility there and a
11 process to handle that increase in value that would not
12 otherwise be (inaudible).

14 COMMISSIONER BURCH: Chair, do you mind if I ask
15 just a couple more?

16 CHAIR HANSEN: Go ahead.

17 COMMISSIONER BURCH: All right. On page 38 in
18 discussion with the in lieu fee, how was 6-percent
19 determined to be the correct percentage?

20 JOEL PAULSON: That I don't know. That's what
21 it's been ever since I've been here, 20-plus years, but I
22 do not know the origins unfortunately of that number.

23 COMMISSIONER BURCH: I thought that might be the
24 answer. Historically does that feel appropriate?
25

1 JOEL PAULSON: We think it's appropriate, and
2 that in combination with the fact that we are now making it
3 extremely hard and only in the hillsides to allow in lieu
4 fees. And that was the Policy Committee's (inaudible) as
5 well is we really want the units produced, we don't have a
6 whole lot of large development in town in the first place
7 to get BMPs, and so I think we have somewhere in the
8 neighborhood of \$3.5 million in our BMP in lieu fee fund,
9 and so the reality is if the Town...

10 And we do have documents and there will probably
11 continue to be conversations of how to use that money. I
12 think some of it is being used for the Dittos Lane
13 projects, so that's generally what we use it for, and then
14 we use it for the administration of the BMP Program, which
15 currently there is an RFP out because every five years
16 approximately we go out and see if the current provider
17 still is kind of the appropriate provider for those
18 services, so we're going through that process currently as
19 well.

20 But it doesn't accrue much money. There's still a
21 handful. I think we have probably five more in the hillside
22 PD, and then I think the in lieu fees were also allowed for
23 Greenwich Terrace, which is eight lots, so other than that,
24 unless we get subdivisions in the hillside we're going to

1 be asking for the units, and the only opportunity for the
2 in lieu fees is in the hillsides and that's going to be
3 even more limited for a number of reasons, not to mention
4 fire and our own regulations, so we still think that that's
5 viable. Our provider hasn't (inaudible) is low or high, so
6 I think we're comfortable at this point moving forward with
7 that number and we'll reach out to them again to see if
8 there are any newer thoughts.
9

10 COMMISSIONER BURCH: So then I would wonder if
11 there's not a way to put some language around maybe
12 evaluation periods on that 6-percent. We do know how
13 property value goes around here and ensuring that if you
14 are getting this from developers, and I get that it's in a
15 very limited scope, but just ensuring that what you get
16 really does match the current financial conditions of the
17 real estate market so that it can be put to good use. I'm
18 not saying it needs to be changed, I just wondered if
19 there's a way we could put some kind of language around an
20 annual or every five year reevaluation of that percentage
21 and its applicability to the current market?

22 JOEL PAULSON: We could do that. What I will say
23 is that every time you want to reevaluate it we have to do
24 a brand new nexus study, which means hiring a consultant,
25 having them go through that and provide information, so

1 it's not something we can just change or have Staff ability
2 to modify or do that work on our own.

3 COMMISSIONER BURCH: Right.

4 JOEL PAULSON: The other thing I can offer is
5 that it depends on the development, but hillside
6 developments specifically is where the majority of those
7 funds come from historically, and it's actually most of
8 those folks. They'll get the planned development and
9 they'll get the subdivision, they sell the individual lots,
10 then the homeowner pays those fees because they're the one
11 who comes forward with the house, so it's not the developer
12 paying that up front.

14 Now, there is some negotiation with price, with
15 that factored in, so they may that conversation when
16 they're selling those lots to potential homeowners. I'm not
17 sure, I'm assuming there is because otherwise every time
18 someone had to pay that fee I'm sure we'd hear a lot more
19 than we currently hear regarding that issue.

20 CHAIR HANSEN: To follow up on what Commissioner
21 Burch was asking, I mean you said it wasn't a problem, so
22 in your opinion and Staff this 6-percent has been enough of
23 a deterrent that do we typically get the people to... I mean,
24 from what I've seen on Planning Commission we typically get
25 them to do the BMP, so we haven't seen that many people do

1 the in lieu fees that are not in the hillsides in like the
2 last five years?

3 JOEL PAULSON: No, absolutely not.

4 CHAIR HANSEN: Okay, so at the moment it seems
5 like the 6-percent is enough of a deterrent that they're
6 better off financially doing the BMP than they are...because
7 they're going to make whatever decision is the least amount
8 of money to them, right?

9 JOEL PAULSON: Well, so that's probably a
10 stretch. Using your analysis of let's just say a \$2 million
11 house, they're going to pay the BMP fee for that because
12 they would have to subsidize that home if they constructed
13 it significantly. Probably the most recent example is the
14 homes that went up off of Knowles, the old county
15 courthouse site. Those were not small homes, they're not
16 hillside homes by any means, but I think the moderate units
17 there were like they had to sell them for \$448,000,
18 somewhere in that neighborhood. That probably barely, even
19 in a flatland project, covered their construction costs.

21 But in a hillside there are a number of other
22 factors as well. Typically our hillside lots are larger
23 lots, typically larger homes. If someone was going to build
24 those in the hillside I imagine they would come in asking
25 for a smaller lot and a smaller home, just because the

1 other is if you're going in and you qualify for the Below
2 Market Price Program you're not going to have the extra
3 money to have a gardener or landscaper take care of that
4 big property and then utilities and other things that go
5 into it just sheerly based on the size of the home, those
6 would be burdens to our below market price folks to try to
7 be able to even maintain that.

8 They're private roads, there could be common
9 area/open space that would have HOA fees that would be very
10 high, so those are all some of the challenges that we have,
11 but I think we're going to see less and less of this and
12 they're going to ultimately probably have to go all the way
13 to the Council if they want to try to pay the in lieu fee
14 even for an HR (inaudible).

16 CHAIR HANSEN: Just one quick question. The
17 housing that's going up on Union Avenue across from
18 Safeway, I know we heard about that. I'm trying to
19 remember. It was under the Housing Accountability Act, but
20 because it was nine units do they have to do a BMP?

21 JOCELYN SHOOPMAN: They do, so they are doing a
22 BMP above the mixed-use building.

23 CHAIR HANSEN: Yeah, I thought that was the
24 case. So, then that says that part is working, that we're
25 getting people to do the units where it's not in the

1 hillsides, so I guess we'll have to see what happens with
2 the hillsides, but I think Commissioner Burch had a good
3 point worth considering. I don't know if it is financially
4 feasible for the Town to keep looking at it, but since
5 we're changing some of the dynamics we might need to at
6 least keep our eye on it. Now, Commissioner Badame has her
7 hand up.

14 JOEL PAULSON: Four.

15 COMMISSIONER BADAME: Thank you.

16 CHAIR HANSEN: Commissioner Burch has her hand
17 up again.

18 COMMISSIONER BURCH: Sorry.

19 CHAIR HANSSEN: Don't be sorry.

24 JOEL PAULSON: What page is that on, the
document?

1 COMMISSIONER BURCH: That is on 41. It where an
2 applicant has to demonstrate the ability to pay things
3 based on exactly what you were just saying. Like I would
4 assume people that are looking at BMPs, even if it was in a
5 development that had an HOA I feel like they probably
6 shouldn't be expected to pay an HOA fee. Does the Town have
7 the ability to dictate that or is that a developer right?
8

9 JOEL PAULSON: I'd probably defer to the Town
10 Attorney but I don't think that's something that we can
11 require the developer that any BMP does not have to pay HOA
12 fees. They're still using those facilities as well, but I
13 have not heard that that's an ability of the Town unless
14 Mr. Schultz has some additional information.

15 TOWN ATTORNEY SCHULTZ: I've never seen it but we
16 can look into it. We'll put that on the list when it goes
17 to Council. I have not seen it where that's happened. I
18 used to have all sorts of concerns like when the roof has
19 to be repaired if that unit hasn't provided the funds for
20 that fix you're asking all the other neighbors that have
21 chipped in their funds to pay for that neighbor's ability.

22 COMMISSIONER BURCH: Or even if the HOA fee could
23 be...

24 JOEL PAULSON: Reduced.
25

COMMISSIONER BURCH: ...correlated more to the value of the home for that person maybe, I'd be curious.

TOWN ATTORNEY SCHULTZ: The issue for ownership is really to integrate them, and so if they weren't paying anything to the homeowners association would that mean they wouldn't be able to sit on the board?

COMMISSIONER BURCH: Yeah, you're right.

9 TOWN ATTORNEY SCHULTZ: But we can look into it.
10 I mean, it's an interesting concept, because ownership of
11 BMPs is a trouble in any town and city because paying the
12 HOAs, we've had a few where they've fallen tremendously
13 behind on that and had to bail them out and find someone
14 else to bail them out, and so maybe it is something we need
15 to look at to see if there's any way we can incorporate
16 that into some of the larger developments.

17 COMMISSIONER BURCH: Right. Thanks. And then I
18 just had one more, Chair, and then I'll stop.

CHAIR HANSSEN: No, that's fine.

1 JOEL PAULSON: That's been in our guidelines for
2 quite a while, ten years and moved out of town, (inaudible)
3 application.

4 TOWN ATTORNEY SCHULTZ: That's usually it's maybe
5 who had lived here more than ten years and then they have
6 maybe been gone just for a year or two. You don't have to
7 be gone ten years but at least within the last ten years
8 you've moved out maybe because you couldn't find rent in
9 this area, now you want to move back in.

10 COMMISSIONER BURCH: Oh, okay.

11 TOWN ATTORNEY SCHULTZ: But you couldn't go more
12 than ten, so if you lived here for 11 years and then were
13 gone for 11 years, you don't get the two points, but if
14 you've been here 11 years and you've been gone less than
15 that ten years, then you'd get the two points.

16 JOEL PAULSON: It's really I think (inaudible)
17 displacement, right?

18 TOWN ATTORNEY SCHULTZ: Yeah.

19 JOEL PAULSON: So if someone gets priced out of
20 the market and has to move to an adjacent jurisdiction
21 because they can get rent affordably, if a BMP unit comes
22 up back in town where they've lived for quite some time you
23 want to be able to provide them that opportunity and I
24
25

1 think that's probably why those points are in the
2 guidelines.

3 COMMISSIONER BURCH: Okay, thanks. That makes
4 more sense. Thank you.

5 CHAIR HANSEN: Did you have any more questions
6 at the moment?

7 COMMISSIONER BURCH: (Inaudible) I can't promise
8 (inaudible).

9 CHAIR HANSEN: That's fine, because we should
10 answer all of your questions. So, do any other
11 Commissioners have questions at the moment? It looks like
12 Commissioner Barnett. I'm hoping to hear from some of the
13 other Commissioners about the points that Commissioner
14 Hudes brought up, and so let me go to Commissioner Barnett
15 for what comments he has.

16 COMMISSIONER BARNETT: Speaking to that point, I
17 was wondering if Staff could help out with some notion of
18 how many of the BMP applicants for purchase or for rental
19 are at certain income levels that we can already define?

20 JOEL PAULSON: A couple of things. One is
21 rentals. Currently you have to be at 80-percent or below
22 the median income for Santa Clara County, and so kind of
23 getting back to Commissioner Hudes' point is yes, this does
24 expand that pool, but as the sheet will mention this was in
25

1 direct response to an issue that comes up quite often with
2 in this instance the teacher housing that was being done at
3 Dittos Lane.

4 For the for-sale units you have to fall into one
5 of those categories. Right now it's moderate or low is
6 typically what we see. If you have more than one unit then
7 the units get split between those two categories and then
8 you have to be in that income bracket so 100-percent of
9 people qualify for each of the income levels that apply for
10 that.

11 CHAIR HANSEN: Okay, so did that answer your
12 question, Commissioner Barnett?

13 COMMISSIONER BARNETT: Yes, it does.

14 CHAIR HANSEN: Okay. So, just to kind of do a
15 (inaudible) on where we are right now, because we had lots
16 of good questions and comments so far. Our objective for
17 this hearing is that we're supposed to make a
18 recommendation to Town Council, and in doing so if we're
19 recommending that they move forward with this it can be
20 with comments. We do need to make the findings that are
21 spelled out in the Staff Report in CEQA and compliance with
22 the General Plan.

23
24 So, that being the case we can take a number of
25 directions, and when we've done these studies in the past

1 we usually forward it along even if it's positive but
2 please consider all these things that we brought up. But we
3 could also say it's not ready and it needs to go back to
4 the Policy Committee and that's the most negative scenario,
5 so I wanted to put that out there in terms of moving the
6 discussion forward, and Commissioner Hudes has his hand up,
7 so go ahead.

13 CHAIR HANSEN: Well, Commissioner Janoff has her
14 hand up so I'm going to take her comments, but I would say
15 that it would be a good idea to try to get a motion out
16 there to see where the Commission is, to see if we need to
17 modify things. So, Vice Chair Janoff.

18 VICE CHAIR JANOFF: Thank you. I just wanted to
19 say that I thought Commissioner Hudes' concerns about the
20 increase on the upper range is an interesting question and
21 we really don't know the answer because it's untested, and
22 I'm wondering whether it's possible to have a revisit with
23 a small report of some sort that can... If we decided to go
24 forward in supporting the larger range could we ask for a
25 report in an appropriate period of time that says this has

1 boxed a lot of people out or it's provided new
2 opportunities for people to get in, just so we know whether
3 this has been a constructive change or a not constructive
4 change? I think that it's an interesting point and we don't
5 know how to test it now; we won't know until we have some
6 data.

7 Then generally speaking I think the comments that
8 have been raised tonight have been very constructive and
9 clear. I would support forwarding this to the Town with
10 those comments to be considered.
11

12 CHAIR HANSEN: Thank you very much for your
13 comments. So, Commissioner Hudes, if you wanted to make a
14 motion, that would be great.

15 COMMISSIONER HUDES: Yeah, actually I wanted to
16 start with one more comment and then I'll include it in the
17 motion, but I wanted to get it on the table first.

18 I don't think we have enough affordable housing.
19 I think the program is very important and I think we're
20 going to be pushed with a lot of numbers to reach and I
21 think it's going to be important that we create affordable
22 housing opportunities.
23

24 These numbers of how many units a developer has
25 to build were developed a long time ago. The profit on
development in town has gone up, we know that, and so I

1 would add a question of whether it might be appropriate to
2 look at raising the number that needs to be created, the
3 amount of housing, by perhaps 10-percent? So, whatever
4 formulas that we're using today, for instance a 5:19
5 requires 10-percent; perhaps it should be 11-percent so
6 that we actually end up getting more housing.

7 Now, it's pretty controversial and a big thing so
8 I'm going to hold off on the motion in case folks would
9 like to comment on that, but it seems to me that while
10 everything has gone up, yes, costs have gone up, prices
11 have gone up, but profits have gone up as well and so
12 perhaps there's an opportunity to take a look, maybe even
13 surveying what other municipalities are doing to see if we
14 can get more affordable housing created.

16 JOEL PAULSON: Through the Chair?

17 CHAIR HANSEN: Go ahead.

18 JOEL PAULSON: Commissioner Hudes, I think that's
19 a great idea and recommendation. I think basically you're
20 recommending that the percentages for the various
21 categories be reviewed and potentially increased. We would
22 have to perform a nexus study to do that. I know a number
23 of other jurisdictions in Santa Clara County have done that
24 recently; the Town did not participate in that action and
25 that was over the last few years, but we might be able to

1 use some of that base information if it's not stale to go
2 out and do an RFP or RFQ for a nexus study for the
3 potential to increase our BMP requirements to hopefully get
4 more units.

5 CHAIR HANSEN: And Vice Chair Janoff has a
6 comment, and I do as well, so go ahead.

7 VICE CHAIR JANOFF: Just in light of those
8 comments, Director Paulson, do you know the outcome? Do you
9 know whether those numbers have been increased or
10 decreased? I mean, I'm sensitive to your previous comments
11 that we are wanting to not disincentivize the building of
12 affordable housing, so do you have any idea or any
13 information about what changed or didn't change with the
14 municipalities who conducted those studies?

16 JOEL PAULSON: I don't, but we can look at it. I
17 know that there are some jurisdictions that have higher
18 minimum requirements, 15-percent or maybe a few of them
19 have 20-percent, that's just across the board. Ours doesn't
20 start at 20-percent until I think you get over 100, but we
21 can take a look at a couple of those studies before it goes
22 to Council and move forward that information with that
23 question from Commissioner Hudes.

24 CHAIR HANSEN: I had the same thought. I liked
25 Commissioner Hudes' suggestion, but from a big picture

1 perspective I'm thinking that we ought to try to get this
2 thing... It's going to be improved by the language changes
3 that have already been proposed without the additional
4 recommendations of the Planning Commission, so I think we
5 can add onto that, but the one thing we have to balance it
6 with is the research in the market that we're not going to
7 deter any production of affordable housing by squeezing the
8 developers more, but at the same time if a market supports
9 it we should try to do that.
10

11 I don't know at what point this is going to
12 Council but if it's possible to do that before that I think
13 it's worth looking at, but I don't want to stand in the... My
14 personal feeling is I don't want to stand in the way of
15 getting the code somewhat tighter even if there are to-dos
16 that go along with it. So, Commissioner Hudes had a
17 comment.

18 COMMISSIONER HUDES: I'm prepared to make a
19 motion to incorporate that idea, if that's okay.

20 CHAIR HANSEN: Okay, go ahead.

21 COMMISSIONER HUDES: I move that we forward a
22 recommendation to the Town Council to approve the changes
23 as provided by Staff with the additions of the comments of
24 the Planning Commission, and I want to highlight several
25 changes that I think need to be pretty explicit.

The comments from Commissioner Barnett, as written.

Commissioner Burch's comments about valuation, in particular resale considerations.

Director Paulson's commitment to take a look and do some research on part-time and gig workers.

Specifically the consideration of looking at additional points for different income levels in the formulation, and again, this is not explicit to change it but to look specifically at five points for 60-percent and three points for 80-percent as something for the consultants to look at to try to balance this and give a better opportunity for low-income residents to participate.

Consider increasing the number of units by doing a survey of other communities to see whether it would be possible to raise the requirements by 10-percent across the board.

So, those are the ones that I captured that I highlighted. There might be others, maybe somebody would like to add them to the motion, but that's the motion as I have it.

CHAIR HANSEN: Are you able to make the findings that are spelled out in the Staff Report?

COMMISSIONER HUDES: Yes, I would include those findings.

CHAIR HANSSEN: Okay. So, let's see if there are any Commissioners that would want to second the motion and then we could always ask for modifications before we vote. Commissioner Badame.

COMMISSIONER BADAME: I would second the motion based upon the additions made by Commissioner Hudes.

CHAIR HANSEN: Okay, so we have a motion and a second. Before we take a vote though this might be a good time to take any additional comments if there are Commissioners that thought there is anything in addition to what Commissioner Hudes had to say or if you had any additional comments that you haven't already made about this motion in general, this would be a good time to do it before we take a vote. So I wanted to see if any other Commissioners... But everyone had contributed suggestions so I think we're okay. I don't see any hands raised.

So, that being the case we have a motion and a second. Did I miss any? Okay, right. So then we'll do a roll call vote and I will start with Commissioner Badame.

COMMISSIONER BADAME: Yes.

CHATB HANSSEN: And then Commissioner Burch.

COMMISSIONER BURCH: Yes

1 CHAIR HANSEN: Okay, Commissioner Hudes.

2 COMMISSIONER HUDES: Yes.

3 CHAIR HANSEN: Commissioner Barnett.

4 COMMISSIONER BARNETT: Yes.

5 CHAIR HANSEN: Vice Chair Janoff.

6 VICE CHAIR JANOFF: Yes.

7 CHAIR HANSEN: And then I vote yes as well, so
8 the motion passes unanimously, and Mr. Paulson, are there
9 any appeal rights for this decision?

10 JOEL PAULSON: There are not appeal rights as
11 this is a recommendation.

12 CHAIR HANSEN: Okay, thank you very much. And
13 thank you for everyone for all your comments, because I
14 think they were really helpful and will help shape this
15 into a better solution for our town.

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TABLE V-1
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
SANTA CLARA COUNTY CITIES

	Campbell	Los Altos	Milpitas	Santa Clara City
Year Adopted / Updated	2006	Est. 1995, update 2009	2015	Est. 1991, update 2006 and 2017
Minimum Project Size				
For Fee Payment	FS, <6du/Ac: 10 units FS, >6 du/Ac: n/a	n/a	FS/R: 5 units	FS/R: 3 units
For Build Requirement	FS, <6du/Ac: n/a FS, >6du/Ac: 10 units	FS: 5 units	no build req.	FS/R: 10 units
Impact / In-Lieu Fee	FS: \$34.50 /sf	none	FS/R: 5% building permit value	Single family: \$30 psf Townhome: \$25 psf Condo: \$20 psf Rentals: \$20 psf
Onsite Requirement/Option				
Percent of Total Units	FS: 15%	FS: 10%	FS/R: 5%	FS/R: 15%
Income Level for Qualification	FS: Low and Moderate	FS: Moderate If <10 units, one unit at Low.	FS/R: Low and Very Low	May be at a range of income levels.
Income Level for Pricing(% AMI)	FS: Moderate @ 110% Low @ 70%	Not Specified.	Not specified.	May be at a range of income levels but must average to 100% AMI or below.
Fractional Units	<0.5: round down, >0.5: round up	provide unit	not specified	pay fee or provide unit
Comments	code does not specify allocation between Low and Moderate; staff indicates approximately 50/50 allocation has been the experience.	<4 du/Ac: no requirement. Also, requirements may be waived by City Council for projects of 9 units or less.	In-lieu/impact fee introduced as temporary measure while City prepares formal nexus study. Fee has not yet been assessed.	

Abbreviations:

R = Rental
du = Dwelling Unit

FS = For Sale
Ac = Acre

/sf = per square foot
AMI = Area Median Income

MF = Multi-Family
SF = Single Family

1. Santa Clara County and Saratoga do not currently have an inclusionary housing requirement.

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction. Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

TABLE V-1
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
SANTA CLARA COUNTY CITIES (PLUS SAN MATEO COUNTY)

	Cupertino	Mountain View	San Jose	Sunnyvale	San Mateo County
Year Adopted / Updated	Est. 1992, update 2015	Est. 1999, rental impact fee in 2012, update 2015	Est. 2010.	Update 2015	Est. 2004; update 2016
Minimum Project Size					
For Fee Payment	FS/R: 1 unit	FS: 3 units R: 5 units Mixed FS/R: 6 units	FS/R: 20 units	FS: 8 units R: 4 units	FS/R: 1 unit
For Build Requirement	FS: 7 units	FS: 10 units	no build req.	FS: 20 units	MF: 10 units; SF: no build reqmt.
Impact / In-Lieu Fee	FS: Detached \$15/sf, Attached \$16.50/sf, MF \$20/sf R: <35 du/Ac \$20/sf, >35 du/Ac \$25/sf	FS: 3% of sales price R: \$17/sf	FS: based on affordability gap R: \$125,000 SF per affordable unit owed	FS: 7% of sales price R: \$8.50/sf (4-7 units), \$17/sf (8+ units)	FS: 1 unit: \$5 psf above 2,500 SF 2-4 units: \$5 psf, 1st 2,500 SF then \$12.50 SF 5+ units: \$15 MF 5+ units: based on gap calculation R: \$10
Onsite Requirement/Option					
Percent of Total Units	FS/R: 15%	FS/R: 10%	FS: 15%	FS: 12.5% R: On-site credits (see below)	MF 5+ units: 20%; SF: 15%
Income Level for Qualification	FS: 1/2 Median 1/2 Moderate R: 40% Low, 60% Very Low	FS: Median R: Low	FS: Moderate R: 9% Moderate 6% Very Low	FS: Moderate	MF 5+ units: FS: ELI to Mod, <= 50% @ Mod; R: ELI to Low, <= 50% @ Low; SF: Mod
Income Level for Pricing(% AMI)	FS: Moderate @ 110%, Median @ 90% R: Low @ 60%, Very Low @ 50% AMI	FS: One unit: 90% AMI Multiple units: 80 - 100% AMI R: Ranges btwn 50-80% AMI	Moderate @ 110% AMI Rental @ 80% and 50% of AMI	Moderate @ 100% AMI	State H&S code standards
Fractional Units	<.5 unit owed: pay fee .5+ unit owed: round up	pay fee or provide unit	<.5 unit owed: round down .5+ unit owed: round up	pay fee or provide unit	pay fee
Comments			Inclusionary program reinstated in 2016 following litigation. Rental requirements automatically apply following AB 1505	On-site rental: developer credited \$300,000/du (Very Low), \$150,000/du (Low). Projects with fewer than 20 units are eligible to pay in-lieu fee.	Inclusionary program applies to multifamily projects of 5+ units; impact fee program applies to single family and smaller multifamily projects.

Abbreviations:

R = Rental
du = Dwelling Unit

FS = For Sale
Ac = Acre

/sf = per square foot
AMI = Area Median Income

MF = Multi-Family
SF = Single Family

Notes: This chart presents an overview, and as a result, terms are simplified. For use other than general comparison, please consult the code and staff of the jurisdiction.

Virtually all cities that do not allow fee payment by right allow developers to seek Council approval of fee payment instead of on-site units, in addition to providing options for off-site construction and land dedication.

TABLE V-1
COMPARISON OF AFFORDABLE HOUSING REQUIREMENTS - RESIDENTIAL
ALAMEDA COUNTY CITIES

	Albany	Fremont	Hayward	San Leandro	Union City
Year Adopted / Updated	2005	Est. 2002, update 2015, full phase-in 2017	Updated in 2017	2004	Est. 2001, update 2006
Minimum Project Size					
For Fee Payment	FS: 5 units	FS/R: 2 units	FS/R: 2 units	FS: 2 units	FS/R: 1 unit
For Build Requirement	FS: 7 units	no build req.	no build req.	FS: 7 units	no build req.
Impact / In-Lieu Fee	FS: (Market Value - Affordable Price) x units owed	FS: Attached \$27.00 no units, \$18.50 w/ aff units Detached \$26.00 no units, \$17.50 w/ aff units, R: \$17.50 no map, \$27.00 w/ map	FS / R: \$18.18/sf, Condos (35+ DU/acre): \$15 /sf Add 10% if paid at C/O	FS: (Median Sale Price - Affordable Price) x units owed	Council Direction for Updated Ordinance (April 2017): FS: \$22/SF R: \$14/SF
Onsite Requirement/Option					
Percent of Total Units	FS: 15%	FS: Attached 3.5% plus \$18.50/sf Detached 4.5% plus \$17.50/sf R: 12.9%	FS: 10%, Condos (35+ DU/acre): 7.5 % R: 6%	FS: 15%	FS: 15%
Income Level for Qualification	FS: <10 units: Low 10+ units: 50% Low, 50% Very Low	FS: Moderate Income R: 19% Extremely Low, 33% Very Low, 25% Low, 24% Moderate	FS: Moderate Income R: 50% Low, 50% Very Low	FS: 60% Moderate, 40% Low	FS: 60% Moderate, 30% Median, 10% Low.
Income Level for Pricing(% AMI)	Not specified.	FS: Moderate @ 110% AMI (120% w/approval) R: Low @ 60% AMI, Very Low @ 50% AMI, Extremely Low @ 30% AMI	FS: Moderate @ 110% AMI R: Low @ 60% AMI Very Low @ 50% AMI	FS: Moderate @ 110% AMI, Low @ 70% AMI	FS: Moderate @ 110% AMI, Median not specified (80-100%) Low @ 70% AMI
Fractional Units	<0.5: pay fee, >0.5: provide unit	pay fee or provide unit	pay fee or provide unit	<0.5: round down, >0.5: round up	pay fee or provide unit
Comments		Full phase-in levels shown. Rental projects with a subdivision map pay the higher fee. FS projects req. to provide onsite units and pay fee.		Fee calculated based on current median sales price.	Reflects Council direction for updates to ordinance that have not yet been adopted. Fee applies to additions over 500 square feet.

Abbreviations:

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ALAMEDA COUNTY CITIES

	Alameda (city) 2003	Berkeley Est. 1986, rental fee 2011, update adopted 2017	Dublin Est. 1997, update 2005	Oakland 2016	Pleasanton Est. 1978, update 2000.
Year Adopted / Updated	2003	Est. 1986, rental fee 2011, update adopted 2017	Est. 1997, update 2005	2016	Est. 1978, update 2000.
Minimum Project Size					
For Fee Payment	FS: 5 units	FS/R: 5 units no build req.	FS/R: 20 units	FS/R: 1 unit no build req.	FS/R: 15 units no build req.
For Build Requirement	FS: 10 units		FS/R: 20 units (partial)		
Impact / In-Lieu Fee	FS: \$19,076/du	FS: 62.5% x (Sale Price - Affordable Price) x units owed R: \$34,000/du or \$37,000/du if paid at C/O	FS/R: \$127,061 per aff unit owed (in addition to on-site)	FS/R: MF \$12,000-\$22,000, SF Attached \$8,000-\$20,000, SF Detached \$8,000-\$23,000	FS/R: MF \$2,783/du, SF <1,500 sq ft: \$2,783/du, >1,500 sq ft: \$11,228/du
Onsite Requirement/Option					
Percent of Total Units	FS: 15%	FS/R: 20%	FS/R: 7.5%, plus fee (12.5% without fee)	FS/R: Option A 5% or Option B 10%	FS/R: MF 15% SF 20%
Income Level for Qualification	FS: 47% Moderate, 27% Low, 27% Very Low	FS: Low R: Current Very Low Proposed 1/2 Very Low, 1/2 Low	FS: 60% Moderate, 40% Low R: 50% Moderate, 20% Low, 30% Very Low	FS/R: Option A Very Low Option B Low and Moderate	FS: MF Low SF Moderate
Income Level for Pricing(% AMI)	FS: Moderate @ 110%, Low @ 70%, Very Low @ 50%	FS: Low @ 80% R: Low at 81%, Very Low at 50%	FS: Moderate @ 110%, Low @ 70% R: Moderate @ 110%, Low @ 80%, Very Low @ 50%	FS: Moderate @ 110%, Low @ 70%, Very Low @ 50% R: Moderate 110%, Low @ 60%, Very Low @ 50%	FS: MF 80% AMI SF 120% AMI
Fractional Units	<0.5: round down, >0.5: round up	pay fee	<0.5: round down, >0.5: round up	pay fee or provide unit	<0.5: round down, >0.5: round up
Comments				Fees vary by neighborhood. Fees phased in through 2020. Full fee levels shown. On-site: May choose Option A or B. Based on draft ordinance prepared for April 19, 2016 council meeting.	

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8/5/2020

To: Madame Mayor & Town Council

Fr: Sarah Chaffin

Re: Modification to Town MFI (Median Family Income) for Rental Units to 120% of AMI

Dear Madame Mayor & Town Council,

Thank you for the opportunity to weigh in on the possible modification to the Town BMP guidelines for rental housing.

Currently, the Town only goes to a maximum of 80% to 100% of AMI for BMP rental guidelines. This is well below the state RNHA guideline of 120% of AMI. The net effect of the current policy is that essential workers like teachers & school employees, police dispatchers, nursing assistants and other community helpers make too much money to qualify for our BMP rental guidelines but not enough money to live in our community.

I would like to recommend that the Town Council supports the Council Policy Committee's and Planning Commission's recommendation to modify the Median Family Income for owner occupied and rental units to up to 120% of AMI.

This would be in line with state RNHA guidelines and help our valuable essential workers live where they work. Increasing MFI could spur the production of more housing units. This change would increase the applicant pool but would not negatively impact lower income applicants as the essential workers would only qualify for higher income units.

Thank you for your considerations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sarah Chaffin".

Sarah Chaffin

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Summary of Community Workshop #2: Affordable Housing
September 29, 2020

Mayor Marcia Jensen welcomed the community, explained how we got here, and stated that Town Manager Laurel Prevetti would be facilitating the meeting.

Town Manager Prevetti provided an overview of the workshop agenda and reviewed ground rules.

Community Development Director Joel Paulson presented a brief overview of Los Gatos Affordable Housing Programs.

Associate Executive Director of West Valley Community Services (WVCS) Sujatha Venkatraman provided overview of services and partnerships provided by WVCS.

Town Attorney Rob Schultz provided an overview of recent state housing legislation.

Town Manager Laurel Prevetti stated the presentations will be posted on the Town's website and opened the floor up to the community for comments, questions, and input.

Q&A/Comments Addressed During the Workshop

Lynel Gardner

- Inquired if Los Gatos is working with neighboring cities to reduce competition for funding and not repeating the same mistakes made in the 1960s with the civil rights movement.

Town Manager Prevetti stated the Town is typically more financially self-sufficient and therefore isn't competing with other cities for State funds. Robert Shultz stated partnering with other jurisdictions for better collaboration is a great idea. Associate Executive Director Venkatraman stated many cities are beginning to collaborate with other entities including at the county and state levels as housing is a statewide issue. Director Paulson stated the Town continues to look for opportunities to collaborate.

Chris of Los Gatos

- Inquired how many Section 8 houses are in Los Gatos.

Town Manager Prevetti stated the County Housing Authority is the entity that administers the Section 8 program and the Town does not know the number of Section 8 certificates being used in Los Gatos. The Town will work with the County to obtain the information if possible and post it to the Town website.

ATTACHMENT 8

Jefferey Suzuki

- Inquired by what metric the success of the Below Market Price (BMP) program is measured. Commented that the BMP program emphasizes ownership over rental housing, the Town is not doing enough to increase the supply of housing, and that the Town loses BMP units when families exceed the income limits.

Director Paulson stated that homeowners' income can increase and when they move, the unit is required to be sold at an affordable rate. Currently, the for-sale down payments is 10% and the Town is looking to change the down payment rate to 3%.

Heidi Owens (written question)

- Inquired what time period is represented with the BMP production numbers.

Director Paulson stated the first inclusionary housing ordinance was in 1976, therefore, up to 40+ years.

Heidi Owens (written question)

- Inquired why the Town does not utilize tiers of moderate, low, very low, and extremely low income?

Director Paulson stated the tiers are determined by state and federal agencies. The Town's current BMP focuses on low and moderate income for for-sale units, and low income for rental units.

Heidi Owens (written question)

- Inquired if Accessory Dwelling Units (ADUs) are counted toward Regional Housing Needs Allocation (RHNA) numbers.

Director Paulson stated that ADUs are counted toward moderate income in the current cycle; however, it is unsure how they will be counted in the future.

Laura Kramer Rahmil

- Was not able to speak due to technical difficulties.

Russ

- Thanked the Town for holding this workshop, stated that the lack of affordable housing is a social justice issue, asked about the backlog/waiting list for these programs, and inquired about the metrics the Town is utilizing to assess the success of these programs.

Associate Executive Director Venkatraman stated there is backlog and a family is typically on a wait list for 3 to 5 years to obtain affordable housing. Director Paulson stated BMP rental waiting lists are held by property owners/managers in Los Gatos, and Hello Housing maintains the lists for affordable for-sale units. In terms of increasing the supply, Town Attorney Shultz stated there is a need for third parties that own land and build affordable housing while collaborating with developers to reduce barriers to affordable housing.

Ali Miano

- Inquired if the Town would consider lowering affordable housing to a 3% down payment and asked about the process by which people become aware of affordable housing opportunities.

Director Paulson stated promotion is through the Town's website, social media, the Los Gatos Weekly, and sometimes large circulation newspapers.

Matthew Hudes

- Commented the Town should strive to increase cultural and economic diversity, not just racial diversity. Inquired what the Town can do to obtain more State funding, and if the Town would consider increasing the percentage of affordable housing units that are required of developers, awarding more points for low and very low incomes, and recognizing gig workers.

Town Manager Prevetti stated the Council will be considering modifications to the Town's BMP program on October 6, 2020.

Maria Ristow (written question)

- Inquired how West Valley Community Services is funded?

Associate Executive Director Venkatraman stated WVCS is funded by grants, fundraising, city support (including Los Gatos), and individual donors.

Anonymous Attendee (written question)

- Inquired about the specific cities that West Valley Community Services serves and asked if the 160 new families using WVCS are just from Los Gatos.

Associate Executive Director Venkatraman stated WVCS serves West San Jose, Cupertino, Los Gatos, Saratoga, Redwood Estates, and some other unincorporated parts of Santa Clara County. She added that there were 160 new families just from Los Gatos, and of those, 52 households received some form of financial assistance.

Don Capobres (written question)

- Inquired how the Town is collecting input from the developer community regarding how to build more affordable housing effectively not just through the BMP program but by design, and if the Town can get independent economic advice to see if various housing types are feasible.

Town Manager Prevetti stated the Town will follow up with the individual as well as other stakeholders regarding the comments. Town Attorney Schultz encouraged the individual to provide input to the General Plan Advisory Committee. Director Paulson stated the Town will reach out to developers, architects, builders, and others to see what challenges they face to building affordable housing.

Kinsey

- Commented that the Town could improve its affordable housing production by restricting single-family housing development, implementing public housing, implementing rent control, providing cooperative housing, and analyzing AB 1600 fees.

Town Manager Prevetti stated the Town has implemented some of these strategies such as rent control and thanked the commenter for her ideas.

Amy

- Inquired if there are incentives for private homeowners to develop ADUs; asked if in-lieu fees can be used to purchase existing housing which can then be converted to affordable housing; and identified an existing lot that could be used as affordable housing.

Director Paulson stated in-lieu fees come from hillside properties currently totaling around \$3.5 million, which does not go far to purchase land or existing structures given current prices.

There is the potential for ADU incentive programs in addition to the current programs such as the Town paying for the ADU application fee. Mayor Jensen stated the affordable housing fund information will be posted to the website.

Rob Rennie (written question)

- Inquired how the next RHNA cycle will change in regard to different affordability levels and if affordability levels will be a requirement rather than a goal.

Director Paulson stated that State laws have changed and in future RHNA cycles/Housing Elements, the Town will not be able to “reuse” sites as potential affordable housing locations. Mayor Jensen stated the Town’s Affordable Housing Overlay zone that required minimum levels of housing for each income level was found by the State to be a barrier to affordable housing production. Town Attorney Shultz stated when RHNA numbers are not met, the State implements repercussions. Associate Executive Director Venkatraman stated policies and visions need to be long-sighted to prevent the State from controlling RHNA needs.

Heidi Owens

- Asked if race was a criterion for affordable housing if the entity received Housing and Urban Development (HUD) funds, why LGBTQ is not included as a criterion in the BMP program, and why the LGMSPD are excluded from the BMP program.

Director Paulson explained the current criteria and stated the Council could consider the BMP guideline modifications on October 6, 2020.

Heidi Owens (written question)

- Inquired if any of the redevelopment funds were used to build affordable housing.

Town Attorney Shultz stated by law at least 20% of the funds were needed to go toward affordable housing and a couple properties were purchased with Redevelopment monies with the intent of creating affordable housing (e.g., Dittos Lane and behind Pizza My Heart).

Laura Kramer Rahmil (written question)

- Commented many Los Gatos residents will move away from the Town to more affordable housing and inquired if the Town would consider building an active adult community?

Director Paulson stated the Town has not seen a proposal for such a community, likely due to land constraints.

Russ (written question)

- Inquired how in lieu fees are calculated, if the Town has considered indexing in lieu to the market price of the units they'd otherwise be creating, limiting the number and allocating them by some sort of auction between developers, or establishing a "cap and trade" analog where developers are rewarded for adding affordable housing units beyond the minimum?

Director Paulson stated the BMP fees are 6% of the entire project and if the fees are identified as needing to be changed a Nexus study will need to be conducted and the developments are typically very small. Town Attorney Shultz stated Nexus studies are studies that show connection between fees and how much the entity is charging.

Anonymous Attendee (written question)

- Commented regarding North 40 phase one, the Town needs more housing but condemning the first big attempt to address housing makes no sense.

Lynel Gardner (written question)

- Inquired what has made Los Gatos self-sufficient and if being self-sufficient given Los Gatos an unfair advantage, politically, and economically. Commented being self-sufficient causing other cities historically, to be at a disadvantage, politically, economically. That makes it that much more important to collaborate with other cities that are at an unfair advantage. In other words, help those other cities to compete on the same level as Los Gatos. For dollars, contractors, builders, and investors. People of color are being pushed into a corner by gentrification and also competing for low-income housing.

Rob Rennie (written question)

- Inquired why an affordable housing organization would want to come to Los Gatos when they can get cheaper land elsewhere and what Los Gatos can do to help.

CDD Director Paulson stated the Town can partner with the private developers, ultimately the developers of affordable housing are looking for height and density. The Town needs to reach out to for profit developers and non-profit developers to find out what barriers there are.

Closing/Next Steps

Mayor Jensen thanked the attendees for a constructive and positive session. She thanked all Council Members for being in attendance to listen with her. She thanked the panelists and staff. She invited the community to attend the next Council Meeting on October 6 via Zoom at which time the Council would decide how to proceed on affordable housing.

The next community workshop is Thursday, October 22 on Community Culture. She invited everyone to attend. After each workshop, Town Council would take up the matter: listen/learn, then assimilate and act.

Additional Written Q&A Previously Addressed During the Workshop

Anonymous Attendee

- How large is the pool for rental rate housing right now? Aren't applicant pools extremely deep? Why would we increase the income ceiling when working class people should be the priority target of affordable housing?

Anonymous Attendee

- Seems like teacher housing is the only plan so far in the pipeline currently for LG. How do we replicate this project/program? Very good idea since education is a priority in our community. Can someone speak more on Town support?

Anonymous Attendee

- I am frankly disturbed by the idea that we would be considering middle income housing when there are applicant pools of hundreds of low income people.

Anonymous Attendee

- The BMP bought unit would essentially be dissolved if the home is foreclosed upon.

Anonymous Attendee

- What is the property behind Pizza My Heart designated for?

Anonymous Attendee

- I understand that when BMP units are passed from one owner to another, the unit is purchased at an "affordable" price. However, the fundamental issue still exists: the unit is effectively not low-income housing when its occupant is no longer low-income. Why shouldn't we focus our efforts on affordable rentals, where this problem wouldn't exist?