ATTACHMENT F

MUNICIPAL CODE SECTION 19.66

Chapter 19.66

AFFORDABLE HOUSING AND SINGLE ROOM OCCUPANCIES

19.66.010. Purpose.
19.66.020. General requirements.
19.66.030. Density limitations.
19.66.040. BMR unit sales prices and procedures; rental prices and procedures.
19.66.050. Eligibility requirements for BMR unit occupants.
19.66.060. Resale controls for BMR units.
19.66.070. Availability of government subsidies.
19.66.080. Density bonus.
19.66.090. BMR in-lieu fee for certain developments.
19.66.100. Density bonus for lower income housing.
19.66.110. An applicant's density bonus for senior citizen housing.
19.66.120. Priority processing.
19.66.130. Technical and financial assistance.
19.66.140. Enforcement.
19.66.150. Appeals.
19.66.160. Single room occupancy (SRO) living unit facility.
19.66.170. Single room occupancy (SRO) residential hotel.

19.66.010. Purpose.

The purpose of this chapter is to enhance the public welfare by ensuring that future housing development contributes to the attainment of the housing goals set forth in the general plan of the city of Sunnyvale by increasing the production of residential units affordable by households of very low, low and moderate income. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.010).

19.66.020. General requirements.

(a) All residential developments consisting of nine or more parcels or dwelling units designed and intended for permanent occupancy located in any zoning district other than R-0, R-I, R-1.5 or R-1.7/PD shall maintain below market rate units according to the terms of this chapter and as more fully outlined in the administrative procedures promulgated by the director of community development.

(1) For ownership units, twelve and one-half percent of the total number of dwelling units or parcels within the development shall be maintained as below market rate. The foregoing requirement shall be applied no more than once to a given development, regardless of changes in the character or ownership of the development, with the exception that all new condominium conversions shall maintain twelve and one-half percent of the total number of dwelling units as below market rate.

(2) For rental units, ten percent of the total number of dwelling units shall be maintained as below market rate. In the event that apartment vacancy rates reach levels of three percent or less and rents show a net increase of twenty percent or more during a twenty-four month period based on the Sunnyvale vacancy and rent survey, all new rental developments shall maintain fifteen percent of the total number of dwelling units as below market rate.

(3) In calculating the applicable percentage, no bonus units as described in Section 19.66.080 shall be considered, any fraction of a dwelling unit or parcel less than five-tenths shall be disregarded and any fraction greater than or equal to five-tenths shall be construed as one dwelling unit.

(b) Any tentative map, use permit or special development permit approving residential construction projects meeting the foregoing criteria shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall specify the schedule of construction of below market rate (BMR) units, the number of BMR units (whether for sale or rental) and their prices, and appropriate resale controls.

(c) All BMR units in a project or phase of a project shall be constructed concurrently with non-BMR units, shall be dispersed throughout such project and reflect the range of numbers of bedrooms provided in the project as a whole, and shall not be distinguished by interior or exterior design, amenities, construction, or materials.

(d) All BMR units shall be sold or rented only to moderate, low or very low income households.

(e) Identification and designation of BMR units and appropriate resale controls shall be recorded as a deed of trust imposing program restrictions with the county recorder of Santa Clara County. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(f) Controls and restrictions on ownership units shall apply for a period of thirty years from the date of recordation.

(g) Controls and restrictions on rental units shall apply for a period of fifty-five years from the date of recordation.

(h) The director of community development, or the director's designee, shall create and maintain administrative procedures that more fully outline the terms and conditions of the BMR program, consistent with this chapter. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.030).

19.66.030. Density limitations.

The limitations upon residential density contained in Chapter 19.18 shall be deemed modified to the extent required by the terms of this chapter. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.040).

19.66.040. BMR unit sales prices and procedures; rental prices and procedures.

(a) Households at seventy percent to one hundred twenty percent of area median income shall be eligible for the ownership program. The city or its designee shall advertise the existence and terms of the BMR housing program to the general public, shall accept applications from prospective purchasers and tenants, shall determine the qualifications of such persons, and shall compile and maintain a list of qualified purchasers. The city shall have access to the seller's records and books pertaining to any unit covered by this chapter.

(b) The owner of a development governed by this chapter shall give written notice to city or its designee, prior to the issuance of an occupancy permit, stating the availability of all such units, the number of bedrooms in each, the estimated construction cost of each, whether each unit is to be sold or rented, and such other information as may be required in order to establish a sales or rental price and arrange for qualified occupants.

(c) Sale prices of below market rate residential units shall be established by the city or its designee and revised annually at levels affordable to households at eighty percent to one hundred twenty percent of area median income with consideration for construction costs, as more fully outlined in the administrative procedures.

(d) Rental prices of below market rate units shall be established at levels affordable to households at seventy percent or less of area median income, as more fully outlined in the administrative procedures. The annual change in the BMR rental prices to be charged by applicants or project owners not participating in federal "Section 8" or similar programs shall be either an increase of five percent or the increased percentage of average annual rent based on the Sunnyvale vacancy and rent survey, whichever is less. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.050).

19.66.050. Eligibility requirements for BMR unit occupants.

(a) The city or its designee shall select potential occupants of BMR purchase and rental units from a list of those persons qualified on the basis of household income, the median combined household income statistics published periodically by HUD, all sources of household income and assets, a relationship between household size and the size of available units, and further appropriate criteria and an equitable selection method to be established in conformance with the terms of this chapter. No distinction shall be made between adults and children. All persons in each of the following categories of otherwise qualified persons shall receive priority placement as more fully outlined in the administrative procedures: qualified public school employees, city employees, childcare workers, persons who live in the city of Sunnyvale, and persons who work in the city of Sunnyvale.

(b) Each purchaser of a BMR dwelling unit shall certify, prior to close of escrow and on an annual basis, in a form acceptable to the city or its designee, that the unit is being purchased and shall be maintained as the purchaser's primary place of residence. Failure of the purchaser to maintain a homeowner's property tax exemption shall be construed as evidence that the BMR unit is not the primary place of residence of the purchaser.

(c) Fees for processing BMR ownership and rental application and fees for loan refinancing shall be established by resolution of the city council. (Ord. 2751-04 § 1; Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.060).

19.66.060. Resale controls for BMR units.

(a) In order to maintain the availability of the housing units constructed pursuant to the requirements of this chapter, the following resale controls shall apply. The price received by the seller of a BMR unit shall be limited to:

(1) The original purchase price plus a percentage increase equal to one-third of any increase in the housing component of the Bay Area Consumer Price Index since the date of the previous sale, plus the adjusted amount of any substantial capital improvement expenditures greater than one percent of the original purchase price, plus any applicable transaction fee charged by a real estate professional, minus any costs necessary to bring the unit into conformity with Title 16 of this code in the event that the occupant has allowed the unit to deteriorate due to deferred maintenance; or

(2) The fair market value, whichever is less.

(b) BMR units constructed, offered for sale, or sold pursuant to the requirements of this chapter by the original purchaser and all subsequent purchasers shall be offered for sale first to the city or its designee. Seller shall ensure that the unit is clean and in good repair and available to be shown to prospective buyers. No time periods shall begin to run until the city has inspected the unit and is satisfied the seller has complied with all program conditions and requirements. In the event that an offer of sale of any BMR unit is not accepted by city or its designee within one hundred eighty days after tender, or once accepted, if

an escrow account contemplating sale of such unit shall not have been opened within ninety days after acceptance, the offer shall terminate. Seller shall not refuse an offer by a qualified buyer if the offer conforms with the monetary restrictions of this chapter. Buyer shall pay its own points, if any. Closing costs shall be shared equally between buyer and seller. During the one hundred eighty day period when the property is offered to the city, the city may propose more than one purchaser. Once opened, an escrow must be closed within ninety days, unless both parties agree to an extension of time. If the city or its designee does not accept an offer of sale within one hundred eighty days, all restrictions, resale controls, and other terms of this chapter shall cease and become null and of no further effect as to such unit. The BMR units shall be sold and resold only to persons determined to be eligible for BMR units according to the terms of this chapter.

(c) The buyer shall record the deed of trust imposing BMR restrictions, stating each of the restrictions and resale controls imposed pursuant to this chapter. The deed of trust shall afford the city the right to enforce all restrictions and resale controls in the manner provided by law. The city or its designee shall facilitate the resale of BMR units, for purposes of preventing any abuse or violation of resale controls. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.070).

19.66.070. Availability of government subsidies.

It is the intent of this chapter that its requirements of construction and maintenance of BMR units shall not depend upon the availability of any government subsidies. This is not to preclude the use of such programs or subsidies where available, however, and it is anticipated that subsidies of rental units will be available from HUD throughout the operation of this chapter. This chapter is not intended to place any unreasonable burden upon developers of residential projects, and for that reason confers significant economic and land use benefits thereon, as set forth in Sections 19.66.080, 19.66.120 and 19.66.130. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.080).

19.66.080. Density bonus.

(a) The city upon request shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, provided all applicable zoning regulations are satisfied. Except as provided in subsection (b), the increase may represent no more than fifteen percent of the maximum number of units otherwise permitted by applicable zoning regulations, in addition to the maximum, except for those developments which meet the requirements set forth in Sections 19.66.100 or 19.66.110.

(b) For housing developments proposed to contain between nine and nineteen units, inclusive, the maximum increase in the number of units permitted shall be the number of BMR units required by Section 19.66.020, plus one unit. This subsection shall not apply to housing developments subject to Section 19.66.100 or 19.66.110. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.090).

19.66.090. BMR in-lieu fee for certain developments.

(a) The director of community development, upon request by the developer, may waive the requirements to provide BMR units pursuant to Section 19.66.020 in exchange for the payment of a BMR in-lieu fee as described below provided the proposed development consists of between nine and nineteen parcels or units. There is no BMR requirement for developments of less than nine parcels or units.

(b) The BMR in-lieu fee for individually owned units shall equal the difference between the fair market value of the BMR unit and the BMR unit price established under 19.66.040.

(c) The BMR in-lieu fee for rental units shall be the difference between the market rent for the units and the established BMR rent capitalized over fifty-five years. The Consumer Price Index shall be used to establish the inflation rate, and the rental rates from the Sunnyvale vacancy and rent survey shall be used to calculate the estimated increase in rental rates. (Ord. 2751-04 § Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.091).

19.66.100. Density bonus for lower income housing.

(a) Notwithstanding any other provision in this chapter for providing a density bonus in conjunction with an application to develop a housing project of five or more units, a developer shall be entitled to a density bonus of at least twenty-five percent over the otherwise maximum allowable residential density for the applicable zoning district, where the developer agrees or proposes to construct:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code; or

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code; or

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code, all as set forth in Section 65915 of the Government Code.

(b) In determining the number of units to be designated under the ten or twenty percent categories, the density bonus to be granted shall not be included. A developer who agrees to construct more than one of the foregoing categories of affordable housing shall be entitled to only one, twenty-five percent density bonus.

(c) Within ninety days of receipt of a preliminary, written proposal for the development of housing pursuant to this section, the city shall notify the housing developer, in writing, of the procedures required for compliance with this section. It is contemplated that such preliminary proposals may be submitted prior to the submittal of any formal requests for general plan amendments, zoning amendments, or subdivision map approvals.

(d) The affordable units designated and constructed by the developer in consideration for the grant of the density bonus pursuant to this section shall remain affordable for a period of at least fifty-five years.

(e) Units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of sixty percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed thirty percent of fifty percent of area median income.

(f) Identification and designation of the affordable units and appropriate resale controls shall be incorporated as a part of the grant deed of a residential development regulated by this chapter. All such controls or restrictions applicable thereto shall run with the land for a period of fifty-five years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program, and shall be recorded as a part of the grant deed with the county recorder. Proof of such recordation shall be deemed a condition precedent to occupancy of any residential unit within a development regulated hereunder.

(g) The procedures for establishing unit sales prices, eligibility requirements and resale controls for affordable units designated pursuant to this section shall be the same as for below market rate units as set forth in Sections 19.66.040, 19.66.050, and 19.66.060.

(h) A housing developer who seeks to waive or modify development or zoning standards which would otherwise inhibit the utilization of the density bonus on a specific site must request a variance pursuant to Chapter 19.84. In addition to the showing required by Chapter 19.84, the housing developer shall show that the waiver or modification is necessary to make the housing units economically feasible.

(i) It is the intent of this section to meet the requirements imposed by Section 65915 of the Government Code, and amendments thereto. Interpretation of requirements, definitions and standards as set forth in this section shall be construed so as to be consistent with Chapter 19.66, to the extent they are not inconsistent with Section 65915 of the Government Code. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.093).

19.66.110. An applicant's density bonus for senior citizen housing.

(a) Upon request, the city shall approve an increase in the number of units permitted in a proposed residential development governed by this chapter, where the entire development is designated and intended for exclusive occupancy by senior citizens. The increase in density may not exceed forty percent of the maximum number of units otherwise permitted by applicable zoning restrictions, and shall not apply to developments of less than twenty units.

(b) The density bonus described in subsection (a) shall be granted only on the condition that the owner enter into a binding, written agreement with the city that twenty percent of the units would be rented at an affordable rate for very low income seniors, and ten percent of the units would be rented at an affordable rate for low income seniors, as defined by the HUD Section 8 program income limits, or its successor or equivalent program. The agreement between the owner and the city would be in effect for the life of the project, and would be recorded with the deed.

(c) Notwithstanding any other provision of this code, and subject to the approval by the director of community development, upon a showing by the applicant that the development is located close to public transportation, parking requirements may be reduced to one space per unit. Factors which shall be considered in determining whether or not to grant a request for reduced parking requirements shall include proximity, accessibility, suitability, practicability and variety of the form or forms of available public transportation.

(d) For purposes of this section, a senior citizen is a person sixty-two years old or older. If two persons occupy a single unit, at least one person must be a senior citizen. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.095).

19.66.120. Priority processing.

All residential developments providing ten percent BMR units or more shall receive "priority processing," by which housing developments shall be reviewed and checked for all required city permit and other approvals in advance of other pending developments. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.100).

19.66.130. Technical and financial assistance.

The city or its designee shall provide assistance to applicants concerning financial subsidy programs, environmental review procedures and economic analysis designed to indicate the most suitable methods by which the terms of this chapter may be implemented. City shall establish application and administration procedures and criteria by which eligible expenditures of such funds and their amounts shall be determined. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.120).

19.66.140. Enforcement.

(a) The provisions of this chapter shall apply to all agents, successors and assigns of an applicant proposing a residential development governed by this chapter. No tentative map, use permit, special development permit or occupancy permit shall be issued for any such development unless exempt from or in compliance with the terms of this chapter.

(b) The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including but not limited to actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to all attorneys fees arising out of any action or proceeding to ensure compliance.

(c) Any individual who sells or rents a restricted unit in violation of the provisions of this chapter shall be required to forfeit all monetary amounts so obtained. Such amounts shall be added to the city's housing fund.

(d) Any individual who violates the terms of this chapter or any deed restrictions may be forced to vacate or sell the unit to the next eligible participant. (Ord. 2717-03 (part): Ord. 2623-99 § 1 (part): prior zoning code § 19.88.140).

19.66.150. Appeals.

(a) Any person aggrieved by any action involving denial, suspension or revocation of an occupancy or other permit, or denial, suspension, or revocation of any development approval, may appeal such action or determination in the manner provided for appeal of use permits, by Chapter 19.98.

(b) Any applicant or other person who contends that his or her rights conferred by this chapter have been adversely affected by any determination or requirement of any agency designated by city as its administrative agent, may notify the chief executive officer of the agency to that effect in writing, stating relevant facts. All such contentions shall be considered exclusively by the agency in accordance with such procedures as it may establish. In instances in which violations of this chapter or any agreement with the city on the part of the agency is alleged, the city shall take appropriate investigative and corrective actions. (Ord. 2623-99 § 1 (part): prior zoning code § 19.88.140).

19.66.160. Single room occupancy (SRO) living unit facility.

(a) A conditional use permit may be issued for an SRO living unit facility only if the following criteria are met:

(1) Excluding the closet and the bathroom area, an SRO living unit must be a minimum of one hundred fifty square feet in floor area. The average unit size in a living unit facility shall be no greater than two hundred seventy-five square feet and no individual living unit may exceed four hundred square feet;

(2) Each SRO living unit shall be designed to accommodate a maximum of two persons;

(3) An SRO living unit may contain partial kitchen facilities;

(4) Individual SRO living units may not have separate external entryways;

(5) The SRO living unit facility must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site, twenty-four-hour manager is required in every living unit project. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room in compliance with Chapter 16.16, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO living unit facility;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the living unit building;

(9) The SRO living unit facility shall provide interior common space at a minimum of four square feet per unit. An SRO living unit facility must provide at least two hundred square feet in area of interior common space, excluding janitorial storage, laundry facilities and common hallways.

(b) The planning commission or the city council shall deny the application for a use permit hereunder where the information submitted by the applicant and/or presented at the public hearing fails to substantiate that the project will

comply with these criteria. (Ord. 2623-99 § 1 (part): prior zoning code § 19.32.160)

19.66.170. Single room occupancy (SRO) residential hotel.

(a) A conditional use permit may be issued for an SRO residential hotel only if the following criteria are met:

(1) Excluding the closet and any bathroom space, an SRO residential hotel unit must be at least seventy square feet in floor area;

(2) An SRO residential hotel room designed to accommodate a maximum of one person shall not exceed one hundred fifty square feet in floor area, and an SRO residential hotel room designed to accommodate a maximum of two persons shall be between one hundred twenty and two hundred nineteen square feet in floor area;

(3) An SRO residential hotel unit may contain partial kitchen and bath facilities. If individual bath and/or kitchen facilities are not provided, common bath facilities and/or common laundry and kitchen facilities must be provided in accordance with Chapter 16.16;

(4) Individual SRO residential hotel units may not have separate external entryways;

(5) The SRO residential hotel must have a management plan approved by the director of community development. The management plan shall contain management policies, operations, rental procedures, maintenance plans, staffing needs and security procedures. An on-site twenty-four-hour manager is required in every SRO residential hotel. The rental procedures must allow for both weekly and monthly tenancies and specify deposit requirements for each type of tenancy. A manager's unit shall be a complete dwelling unit and so designated on all plans;

(6) Laundry facilities must be provided in a separate room, at the ratio of one washer and one dryer for every twenty units or fractional number thereof. The laundry facility must be located near the interior common space. Washers and dryers may be coin operated;

(7) A closet and separate storage space, as approved by the director of community development, is required in every SRO residential hotel room;

(8) A cleaning supply storeroom and/or utility closet with at least one laundry tub with hot and cold running water must be provided on each floor of the residential hotel building;

(9) The SRO residential hotel shall provide interior common space at a minimum of four square feet per unit. The SRO residential hotel shall provide a minimum of two hundred square feet of interior common area.

(b) The planning commission or the city council shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate that the project will comply with these criteria. (Ord. 2623-99 § 1 (part): prior zoning code § 19.32.162).