# Chapter 19.69
# EXISTING BELOW MARKET RATE RENTAL HOUSING

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## 19.69.010. Purpose.

(a) **Findings.** The city council finds that:

(1) A shortage of affordable housing is detrimental to the public health, safety and welfare in the City of Sunnyvale;

(2) Persons with lower incomes who work or live in the City are experiencing a shortage of affordable rental housing opportunities and those with very low incomes are increasingly excluded from living in the City;

(3) Federal and state housing subsidy programs are not sufficient by themselves to satisfy the housing needs of lower income households;

(4) It is a public purpose of the City to ensure that housing is available for persons with lower incomes, and that such supply of housing remains affordable to future residents; and

(5) It is the City's goal and a public policy of the State of California to ensure there is adequate supply of housing for persons of all economic segments of the community.

(b) **Purpose.** This chapter establishes requirements for existing rental housing developments subject to below market rate requirements that were in effect before July 2009, in order to continue to contribute to the provision of affordable rental housing for lower income households; to achieve the housing objectives contained in state law and in the general plan; and to enhance public welfare.

## 19.69.020. Definitions.

When used in this chapter, these terms mean the following:

(1) "**Area median income (AMI)**" means the median household income of households in Santa Clara County, adjusted for household size, as determined and published by the California Housing and Community Development Department (HCD).

(2) "**Assumed household size**" means, for the purposes of establishing affordable rents, a household with a total number of members equal to the number of bedrooms in the below market rate home, plus one. For example, the assumed household size for a 3-bedroom home is a 4-person household. Household members include all adults and children of any age residing in the same dwelling unit, and functioning as one financial and housekeeping unit.

(3) "**Assisted housing**" means any project that receives development funding from any local, state, or federal governmental or non-profit source, which meets the criteria for below market rate housing.

(4) "**Below market rate (BMR) rental housing**" means rental dwelling units affordable to lower income households and regulated by this chapter. A "BMR rental unit" means one BMR rental housing dwelling unit.

(5) "**Eligible tenant**" means a lower income household which meets the eligibility requirements of this chapter to rent a BMR rental unit. Tenant eligibility shall be determined by the property manager prior to occupancy of a BMR rental unit and annually thereafter, and verified by the director through annual audits of the property manager's leasing files and other related records.

(6) "**Gross annual household income**" means the gross, pre-tax income of all adult occupants of the applicant household, and as may be further defined in the BMR Rental Housing Guidelines.

(7) "**Housing cost**" means the sum of monthly rent and utility costs, not including telecommunications services (telephone, cable television, internet), charged to tenants for rental of a BMR rental unit.

(8) **Lower income household**" means a household with a gross annual household income at or below 80% of AMI for Santa Clara County. This definition corresponds to the definition of lower income households used for state- and federally-assisted housing programs.

(9) "**Market rate unit**" means a dwelling unit that is not subject to the occupancy or rental restrictions in this chapter or any other affordability restrictions or covenants.

(10) "**Very low income household**" means a household with a gross annual household income that does not exceed 50% of AMI for Santa Clara County. This definition corresponds to the definition of very low income household used for state- and federally-assisted housing programs. Very low income households are a subset of lower income households.

## 19.69.030. Applicability

(a) **Existing BMR Rental Units.** This chapter applies to rental housing developments subject to a BMR Housing Agreement recorded before the enactment of this chapter and for the term specified in the Agreement.

(b) **BMR Rental Housing Guidelines.** The director shall develop detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter. These procedures and guidelines are incorporated into this chapter as the BMR Rental Housing Guidelines.

## 19.69.040. Below Market Rate Housing (BMR) Requirement.

The BMR housing requirement for any rental housing development subject to this chapter is what is specified in the recorded BMR Housing Agreement.

## 19.69.050. Occupancy and Rental Restrictions.

(a) **Term of Restrictions.** BMR rental units shall be reserved for rental to and occupancy by lower income households and shall be subject to the occupancy and rental restrictions in this chapter for the term recorded in the applicable BMR Housing Agreement.

(b) **Maximum Rent.** The director shall establish and publish annually the maximum rent amount for each unit size in the BMR Rental Housing Guidelines. The maximum rent for BMR rental units shall not exceed a price affordable to lower income households, and based on a housing cost of 30% of monthly gross household income for the unit's assumed household size. The percentage of AMI used to establish maximum rents shall be 70%, except that the director may adjust the percentage within a range of 60% to 75% of AMI to address major shifts in prevailing market rate rents for comparable dwellings or other related economic conditions affecting the demand for BMR rental housing. Existing leases with rents within the BMR rent limits in effect when the lease was executed or amended are exempt from this subsection, until the unit is first vacated and leased to a new tenant following enactment of this chapter.

(c) **Eligibility to Rent.** The eligibility of a prospective tenant shall be determined and certified by the property manager before the execution of a lease and occupancy of a BMR rental unit. It is unlawful for any person to willfully make a false representation or fail to disclose information for the purpose of qualifying as eligible to rent a BMR rental unit. Prospective tenants are subject to the following:

(1) **Procedures for Review.** The property owner or manager shall review the assets and income of prospective renters using the forms and procedures provided by the director before executing a lease to rent a BMR rental unit. The director shall audit the eligibility review and leasing files of the property owner or manager annually to determine compliance with this chapter.

(2) **Income Limits.** The prospective tenant's combined household income and assets shall not exceed the limits for a lower income household, and as further defined in the BMR Rental Housing Guidelines.

(3) **Conflict of interest.** The following individuals, by virtue of their position or relationship, are ineligible to rent a BMR rental unit:

(A) Any City official or employee who administers or has policy-making authority over City housing programs;

(B) The developer of the unit; or

(C) The immediate relative or employee of, and anyone gaining significant economic benefit from a direct business association with, City employees, officials, developers, or owners who are not eligible to rent a BMR rental unit; and

(4) **Additional Criteria.** The director may establish other reasonable eligibility criteria to ensure tenants' ability to pay rent when due and comply with standard lease terms, and to ensure effective operation of the program.

**19.69.060. Enforcement.**

In addition to the provisions in Chapter 19.98.140 (Violations), the following provisions also apply to the enforcement of this chapter:

(a) **Agents, Successors and Assigns.** The provisions of this chapter apply to all agents, successors and assigns of the applicant.

(b) **Penalties and Fines.** Any person, firm, or corporation, whether as principal or agent, violating or causing the violation of this chapter is guilty of a misdemeanor. Conviction may be punishable for each offense by a fine of up to $500.00 or by imprisonment in the Santa Clara County jail for a term up to 6 months, or by both. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this chapter is commenced, continued, or permitted by such person, firm, or corporation, and may be punishable as provided in this section.

(c) **Civil Action.** Any eligible tenant of a BMR rental unit who has been charged rents in excess of that allowed by this chapter and has given written notice to the director, may file a civil action to recover any excess rents. .

(d) **BMR Rental Fines.** If it is determined that rents and utilities in excess of those allowed by the administration of this chapter and the BMR Rental Housing Guidelines have been charged to a tenant of a BMR rental unit, the landlord is liable for a civil penalty. The civil penalty amount shall be as set forth in Chapter 1.04 or 1.05, as amended from time to time, and any excess rent and utilities not recovered by a tenant under subsection (c). If the City does not otherwise recover its reasonable attorney fees and other legal costs from the landlord, the City shall deduct these costs from the amounts collected under this section and deposit the balance into the BMR Housing Trust Fund.

(e) **Legal Action.** The City may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages.

**19.69.070. Annual Report.**

The director shall provide an annual report to the city council on the status of BMR rental units maintained under this chapter. The report shall include the number, size, type, compliance status, and general location of each unit, as well as the number of any units released from the program restrictions by the end of the term specified in the BMR Housing Agreement, and the BMR rental vacancy rate.

**19.69.080. Severability.**

If any portion of this chapter is held to be invalid, unconstitutional, or unenforceable by a court of competent jurisdiction, that decision will not affect the validity of the remaining portions of this Zoning Code. The city council declares that this chapter and each portion would have been adopted without regard to whether any portion of this chapter would be later declared invalid, unconstitutional, or unenforceable.