



**Draft for Housing and Human Services Commission Review
on May 23, 2012**

Council Date: July 31, 2012

**SUBJECT: Modifications to the Zoning Code Related to Chapter 19.66:
Affordable Housing and Single Room Occupancies (Study Issue CDD 09-
12C and Non-Routine HO-01)**

REPORT IN BRIEF

In 1980, Council established the Below Market Rate (“BMR”) Housing Program, which is currently codified in Sunnyvale Municipal Code (SMC) Chapter 19.66 (“the Ordinance”). The BMR Program has been an important tool for providing rental and ownership opportunities for Sunnyvale’s low- to moderate-income households. As of March 2012, the BMR Program has produced 380 ownership and 639 rental units. In December 2013, an additional 46 BMR rental units will be added to the inventory. Staff anticipates approximately 130 additional ownership units to be created in the coming years.

Several minor amendments to the Ordinance were adopted in 2003. Over the last several years several study issue papers and non-routines have been approved to address additional revisions to the Ordinance. Completion of these items were delayed due to various legal issues and most recently, a decision to conduct a study to document the nexus between new residential development and the demand for affordable housing created by the new development. A nexus study was completed in April 2012 by Economic & Planning Systems, Inc. (“EPS”) and is provided in **Attachment A**.

Staff has reviewed affordable housing ordinances of other jurisdictions and held outreach meetings with developers, affordable housing advocates and the general public to solicit their input on the BMR requirements imposed on new development. Staff has developed new zoning code provisions to make the proposed improvements to the Below Market Rate Housing Requirements. These provisions are provided in the draft ordinance (**Attachment B**).

Staff Recommendation: Adopt the ordinance provided in **Attachment B** to modify the zoning code related to Below Market Rate Housing Requirements and to move the density bonus and single room occupancy subsections from Chapter 19.66 to other chapters of the zoning code.

BACKGROUND

City Council adopted the Ordinance in 1980 in order to ensure that new housing developments were affordable to households with a wide range of incomes. The Ordinance has been amended several times, most recently in 2003. Several study issues papers and non-routines have been prepared in recent years, upon Council and staff recommendations to improve the BMR Program. In addition, in 2008 Council considered a proposed “Affordable Housing Strategy” (RTC 08-309), which included options for improving the BMR Program and other City affordable housing programs. These study issues and non-routines were consolidated into one non-routine in 2009 (CDD HO-01, shown in **Attachment C**). In addition, staff incorporated Council actions outlined in the Affordable Housing Strategy and the Housing and Community Revitalization Sub-element into the same non-routine.

A portion of the BMR Ordinance amendments work plan was completed in 2010, but the remainder of the work plan was put on hold, pending the outcome of litigation by a developer challenging the BMR requirements imposed on one of the developer’s Sunnyvale projects (Trinity Park). In March 2011, the City’s BMR requirements were upheld in court. Staff then prepared a study to quantify the nexus between new residential development in Sunnyvale and the demand for affordable housing that would be created by new development, similar to traffic studies or other studies done to quantify impacts for the purposes of setting impact fee rates or mitigation measures.

Staff contracted with EPS in November 2011 to conduct a nexus study analyzing the impact that development of market-rate housing has on the demand for BMR housing, and to determine the defensible nexus-based fee that could be charged to market rate housing developments. The fee represents the maximum fee that may be charged to new market-rate housing units to mitigate the impacts of market rate housing. These fees are then used by the City to assist in the production of new affordable units for moderate-and lower-income households not accommodated by market-rate projects.

The intent of the BMR program is to enhance the public welfare by ensuring that future housing development includes housing affordable to households of various income levels, from lower to moderate incomes. The existing Ordinance includes requirements for ownership and rental developments, density bonus provisions and single room occupancy (“SRO”) requirements.

Proposed Improvements to the Below Market Rate Housing Program

At the October 14, 2008 City Council meeting, Council considered several changes to the BMR Home Ownership Program as part of its review of the City of Sunnyvale Affordable Housing Strategy (RTC 08-309). Those changes included:

- Allowing developers to acquire and rehabilitate existing housing in other locations to meet their BMR requirements if that would result in more BMR units than otherwise required;
- Allowing developers to provide BMR units at a different site than the market-rate units, if that would result in more BMR units than otherwise required (often referred to as an “off-site” or “transfer of credits” option);
- Increasing BMR ownership requirements from 12.5% to 15%, only where legally required for future redevelopment areas (“RDA”). This change is now legally obsolete due to the dissolution of redevelopment agencies;
- Allowing the maximum resale price of BMR homes to be based on 100%, rather than 33.3%, of the increase in the Consumer Price Index for housing costs during the BMR homeowner’s term of ownership;
- Amend the density bonus section of the Ordinance to be consistent with State Density Bonus Law.

Study Issue CDD 09-12C from 2009, which has since been incorporated into non-routine CDD HO-01, raised the question of how to handle fractional BMR unit requirements (i.e., to continue rounding up or down to the nearest whole units, as the current ordinance requires, or to allow developers to pay a fee for the fractional unit requirement). As part of this particular study issue, staff was asked to analyze the potential costs and/or benefits to the City and developer of modifying this aspect of the Ordinance.

All of the above issues, as well as BMR issues identified during outreach and preparation of the 2008 Affordable Housing Strategy, 2009 Housing Element Update, 2010 Consolidated Plan, and recent case law decisions are addressed in this staff report. Staff recommendations regarding in-lieu fees and on-site construction requirements are supported by the conclusions of the nexus study.

EXISTING POLICY

Sunnyvale General Plan, Housing Element:

Goal A: Assist in the provision of adequate housing to meet the diverse needs of Sunnyvale’s households of all income levels.

Policy A.3: Utilize the Below Market Rate (BMR) Housing requirements as a tool to integrate affordable units within market rate developments, and increase the availability of affordable housing throughout the community.

DISCUSSION

Staff reviewed the below market rate programs of the cities of Santa Clara, Mountain View, Milpitas, Fremont, Hayward, Watsonville, Cupertino, San Jose, Palo Alto, San Leandro and Campbell to identify best practices and to ensure

that the recommendations proposed by staff are comparable to those of other cities. The results of that survey indicated that several cities allow developers to pay an in-lieu fee for fractional BMR units and provide offsite options to developers to provide BMR units. Below market rate programs throughout the Bay Area vary greatly. Several programs are similar to Sunnyvale's current program and integrate BMR homes in market-rate developments. Additionally, there are other cities like San Jose that provide developers with a menu of options, including providing onsite and offsite BMR units, while some cities, such as Mountain View, prefer to collect an in-lieu fee and develop affordable rental apartments.

Staff has consolidated all of the prior goals and items identified in the study issues and non-routines noted above into the following five goals:

1. A clear and understandable code that sets forth the basic program structure and key requirements for developers while allowing staff to make reasonable program improvements periodically to ensure effective program operations.
2. A menu of options for developers to use to meet BMR requirements.
3. Greater consistency with state and federal law, including recent case law, and with state and federal terminology.
4. More effective provisions for compliance monitoring and enforcement.
5. Allow developers to pay an in-lieu fee on a wider range of developments, particularly when payment of the fee results in better public policy outcomes, such as providing more units at greater levels of affordability.

In order to effectively implement these changes and comply with recent changes in state law, the proposed code revisions separate the below market rate program requirements into two new chapters: Chapter 19.65: Below Market Rate Ownership Housing Requirements; and Chapter 19.67: Existing Below Market Rate Rental Housing Requirements. Chapter 19.67 is applicable only to existing BMR rental properties developed as a condition of rental project land use approvals issued prior to July 2009, as explained below.

Goal 1: A clear and understandable code

The revised Below Market Rate Housing provisions in draft Chapters 19.65 and 19.67 omit references to outdated administrative processes that are not cost-effective and are more appropriately addressed in the Program Guidelines. The proposed provisions allow staff to administer the program in a more streamlined, cost-effective manner. Compliance and enforcement provisions have also been improved.

Draft Chapter 19.65 sets forth clear requirements for affordability levels and BMR unit standards applicable to new ownership housing developments. It streamlines the process of establishing maximum BMR sale prices by

employing a standard formula applicable to all BMR homes, new and resale, to save staff, developers, and BMR home-owners time.

Draft Chapter 19.67 also streamlines and standardizes the process of setting maximum BMR rent limits so that all existing BMR rentals will be subject to the same rent limits, adjusted for unit size, based on current affordability levels rather than market rate rent increases and historic rates. These adjustments have been set to be as cost-neutral as possible to tenants and property owners, while easing the annual administrative burdens on property management and staff. Details of these recommendations are shown in **Attachment D** and in the draft Chapter 19.65 in **Attachment B**.

Goal 2: A menu of options

Draft Chapter 19.65 allows ownership housing developers to choose from several new options for providing affordable housing in order to meet their below market rate requirements. The options listed below are commonly used in other jurisdictions with BMR programs. In order to receive approval to use any of these options, applicants would have to demonstrate that the proposed alternative would provide more BMR units, a greater degree of affordability, and/or a more desirable type of unit for the target occupants and/or neighborhood, than would be provided by providing standard BMR homes for sale within the market-rate project. The use of any of these alternatives would require approval of the approving body at the time of entitlement.

- a. *Transfer of Credits:* Allow developers to provide BMR units at an alternative site rather than in the market-rate development. This option (also known as an “off-site” option) may include use of one alternative site for BMR units to satisfy the BMR requirements of one or more market-rate developments. This variation is also referred to as “pooling of credits” option.
- b. *Acquisition/Rehabilitation/Preservation:* Allow developers to acquire and/or rehabilitate a market-rate property and place a long-term affordability covenant on it, thus converting it to affordable housing, or rehabilitate and preserve an expiring affordable housing property and extend the term of affordability for at least 40 years. Using the option, a developer can opt to partner with or assist a non-profit developer on a project. This option is also referred to as the “existing unit conversion” option.
- c. *Alternative Housing Types:* Provide BMR homes within the market-rate development of slightly different housing types and/or sizes than the market rate homes. For instance, in a townhome project, provide BMRs as stacked flats, or in a single-family subdivision, provide BMRs as duets or townhomes. Design of the BMR structures must be consistent in design and scale with that of the market-rate homes, so as to blend in from the

street view. The units must also be of adequate size and quality to be marketable to buyers in the target income groups for the proposed BMR prices, given market conditions at the time of the development, as determined by the Community Development Director.

Goal 3: Greater consistency with state and federal law

1. *BMR Rental Program*: Due to a court decision rendered in July 2009 regarding the *Palmer/Sixth Street Properties v. City of Los Angeles* case, jurisdictions can no longer require rental housing developers to provide below market rate units unless they request and receive local subsidies for the BMR units. In light of this change, draft Chapter 19.67 is not applicable to new rental developments entitled after July 2009, however it includes provisions to maintain the affordability of existing BMR rental units, including one final project currently under construction, for the remainder of their terms of restriction, which range from 30 years to 55 years. It also includes provisions for streamlined administration of existing BMR rental units, and enforcement provisions similar to those in Chapter 19.65, as appropriate for rentals.
2. *Density Bonus*: State density bonus law provides regulatory incentives to developers for including affordable housing in their developments. It requires local jurisdictions to provide a “density bonus,” which allows the developer to build more dwelling units per acre than otherwise allowed on the site by local zoning codes, if the developer includes qualifying affordable units in the project. State density bonus law was amended by Senate Bill 1818, which took effect in 2005 and set forth more detailed density bonus requirements applicable to developers and local jurisdictions. The current Ordinance includes several density bonus options that are no longer consistent with the new state density bonus law. Rather than reiterate all of the state provisions, which could be amended again in the future, the draft provisions simply refer to the state statutes. In addition, since the density bonus option is available for any residential project, not just those subject to the BMR requirements, the revised density bonus provisions are proposed to be located in Chapter 19.18.020, the section establishing maximum residential densities for each zoning district, rather than in the chapter containing BMR requirements.
3. Draft Chapter 19.65 applies the residential BMR requirements to all residential zones, including single family and mixed use zoning districts, in order to distribute BMR units as widely as possible throughout the City, in any new for-sale developments of nine or more homes or condominiums. This change brings the ordinance into greater compliance with fair housing law, and provides greater opportunities to create affordable housing and/or generate BMR in-lieu fee revenues.

Goal 4: More effective provisions for compliance monitoring and enforcement.

The current Ordinance states that the City may take any appropriate legal actions or proceedings necessary to ensure compliance with the Ordinance. In addition, it states that any individual who sells or rents a restricted unit in violation of the Ordinance is required to forfeit all monetary amounts received. Further, any individual who violates the terms of the Ordinance or any deed restrictions may be forced to vacate or sell the unit to the next eligible program participant. Draft Chapters 19.65 and 19.67 include improved provisions for enforcement related to recovery of excess proceeds in the case of foreclosure or insurance loss payments, and defines conflicts of interest and violations. Additional provisions allow eligible occupants who have been charged amounts in excess of those allowed by the BMR sales price or rent limits to pursue civil actions to recover such amounts, and allow the City to charge violators with a misdemeanor and/or institute various civil actions to enforce the requirements.

Goal 5: Allow developers to pay an in-lieu fee on a wider range of developments

The results of the nexus study conducted by EPS (**Attachment A**) support an average BMR requirement of 34% of the units in a project, or an in-lieu fee of approximately 7% of the sales price of the market rate units. The scope of this RTC did not include changing the percentage of BMR units required in developments providing the units on-site. Furthermore, a BMR requirement of 34% would likely be financially infeasible, and could discourage development of new housing needed to meet the demand generated by local workers and younger residents forming new households. Therefore the draft Chapter 19.65 contains the same BMR requirement of 12.5% as the current Ordinance, for those projects that provide BMR units on site. Reconsideration of the in-lieu fee amount was part of study issue 09-12C; however, coincidentally, the percentage supported by the nexus study (7%) is the same as the fee required in the current ordinance, therefore staff recommends leaving the approximate fee rate the same, while expressing it as a percentage of the sales price, rather than by the formula currently provided in the Ordinance.

Summary of Changes to In-Lieu Fee Requirements

1. *In-Lieu Fee*: Set the in-lieu fee at 7% of the market rate sales price. This results in a fee of essentially the same amount as would be paid under the current ordinance. The current ordinance expresses the fee amount by formula rather than a percentage of the sales price. However, the resulting payment per development would be virtually the same, based on the current difference between market-rate and BMR prices.
2. *Fractional Units*: Give developers the option to pay an in-lieu fee for the fractional unit or round up to provide an additional unit.

3. *Remove 19-unit Project Limit:* The current Ordinance only allows developers to use the in-lieu fee option in developments of 19 or fewer homes. Draft Chapter 19.65 removes this limit, allowing any development subject to BMR requirements to pay the fee, as long as the approving body approves this option at the time of entitlement.

FISCAL IMPACT

Adoption of the proposed Ordinance would not directly impact the General Fund. However it could increase the amount of BMR in-lieu fee revenue to the BMR in-lieu fee fund, which can be used to create affordable units and provide down-payment assistance loans for low- to moderate-income households, with a small percentage available for program administration.

PUBLIC CONTACT

Staff held outreach meetings for developers, affordable housing advocates and the general public on September 21, 2011 and on May 15, 2012. Overall, the response to the proposed amendments at these outreach meetings were positive. The second meeting [reserved for comments after the meeting is held].

Public Contact was made through posting of the Housing and Human Service Commission agenda on the City's official-notice bulletin board, on the City's Web site, and the availability of the agenda and report in the Office of the City Clerk.

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

1. Adopt the Ordinance provided in **Attachment B** to: modify the zoning code related to Below Market Rate Housing Requirements; update the density bonus provisions; and move the density bonus and single room occupancy subsections from Chapter 19.66 to Chapters 19.18 and 19.68, respectively.
2. Adopt the Ordinance with modifications to be determined by Council.
3. Take no action and/or direct staff to study additional options.

RECOMMENDATION

Alternative 1:

Adopt the Ordinance provided in Attachment B to: modify the zoning code related to Below Market Rate Housing Requirements; update the density bonus

provisions; and move the density bonus and single room occupancy subsections from Chapter 19.66 to Chapters 19.18 and 19.68, respectively.

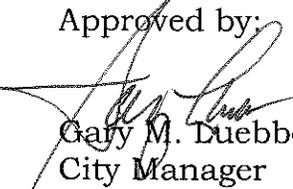
High housing costs are one of the most difficult challenges facing Silicon Valley. The need for more affordable housing is critical. The proposed zoning code modifications will preserve those aspects of the BMR home ownership program that have served Sunnyvale well for over thirty years, while providing developers with a menu of options for satisfying the BMR requirements. Although approval by an approving body is required for a number of these choices, the additional flexibility allows the City to work with developers on appropriate projects to produce a greater number of BMR units and/or units affordable to households with the greatest need for assistance, as indicated by the nexus study. This flexibility also allows for the option of developing rental units through the use of in-lieu fees, in the post-Palmer era, to meet the pressing need for rental units affordable to very low and low income households. In addition, the proposed modifications to the density bonus provisions and single room occupancy requirements improve clarity and organization of the zoning code, and are more consistent with current state law.

Reviewed by:


for Hanson Hom, Director, Community Development
Trudi Ryan, Planning Officer

Prepared by: Ernie DeFrenchi, Affordable Housing Manager
Suzanne Isé, Housing Officer

Approved by:


Gary M. Duebbers
City Manager

Attachments

- A. Nexus Study by Economics & Planning Systems
- B. Draft Ordinance Modifying the Zoning Code related to Chapter 19.66:
Affordable Housing and Single Room Occupancies
- C. Non-Routine CDD HO-01
- D. Summary of Current and Proposed Ordinance Changes

Attachment A

Nexus Study Draft – Economics & Planning Systems
(if viewing this document online,
Nexus is a separate link)

Attachment B

Draft Ordinance

Modifying Title 19 of the Sunnyvale Municipal Code

Related to Chapter 19.66:

Affordable Housing and Single Room Occupancies

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE AMENDING CERTAIN CHAPTERS AND SECTIONS OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE PERTAINING TO BELOW MARKET RATE HOUSING REQUIREMENTS

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 19.65 ADDED. Chapter 19.65 (Below Market Rate Ownership Housing Requirements) of Title 19 (Zoning) is hereby added to read as set forth in Exhibit “A” attached and incorporated by reference.

SECTION 2. CHAPTER 19.67 ADDED. Chapter 19.67 (Existing Below Market Rate Rental Housing Requirements) of Title 19 (Zoning) is hereby added to read as set forth in Exhibit “B” attached and incorporated by reference.

SECTION 3. SECTION 19.18.020 AMENDED. Section 19.18.020 of Chapter 19.18 (Residential Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.18.020. Residential zoning districts.

Residential zoning districts are reserved for the maximum allowable density specified below, expressed in number of dwelling units per acre, except as otherwise provided for in Section 19.18.025 (Density Bonus). Other uses will be permitted which are compatible with the residential character of the zoning districts.

(a) – (h) [Text unchanged.]

SECTION 4. SECTION 19.18.025 ADDED. Section 19.18.025 of Chapter 19.18 (Residential Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby added to read as follows:

19.18.025. Density Bonus.

A density bonus of up to 35% above the maximum allowable density of a residential zoning district may be granted pursuant to California Government Code Sections 65915-65918 and through other development incentives adopted by the city council.

SECTION 5. SECTION 19.30.040 AMENDED. Section 19.30.040 of Chapter 19.30 (Lot Area and Lot Width) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.30.040. Dwelling units allowed in multiple-family zoning districts.

The number of dwelling units allowed per minimum lot area in multiple-family zoning districts is specified in Table 19.30.040. Additional dwelling units may be allowed pursuant to Section 19.18.025 (Density Bonus).

SECTION 6. CHAPTER 19.68 AMENDED. Chapter 19.68 (Mobile and Accessory Living Units) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

**Chapter 19.68
Standards for Specific Housing Types**

19.68.010. Purpose.

19.68.020. Mobile living units.

19.68.030. Mobile home.

19.68.040. Accessory living units.

19.68.050. Single-room occupancy (SRO) living unit facility.

19.68.060. Single-room occupancy (SRO) residential hotel.

19.68.010. Purpose.

This chapter establishes the requirements and standards related to specific housing types.

19.68.020. Mobile living units.

[Text unchanged.]

19.68.030. Mobile home.

[Text unchanged.]

19.68.040. Accessory living units.

[Text unchanged.]

19.68.050. 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.

19.68.060. 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.

SECTION 7. SECTION 19.74.080 AMENDED. Section 19.74.080 of Chapter 19.74 (Park Dedication Fees for Rental Housing Projects) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read as follows:

19.74.080. Exemption.

Any dwelling units designated as affordable housing units are exempt from the total number of dwelling units used in the calculations set forth in Section 19.74.070.

SECTION 8. CHAPTER 19.66 REPEALED. Chapter 19.66 (Affordable Housing and Single Room Occupancies) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby repealed in its entirety.

SECTION 9. EXEMPTION FROM CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

SECTION 10. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have adopted this ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 11. EFFECTIVE DATE. This ordinance shall be in full force and effect 30 days from and after the date of its adoption.

SECTION 12. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within 15 days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2012, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, 2012, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____
(SEAL)

Mayor

APPROVED AS TO FORM AND LEGALITY:

Michael Martello, Interim City Attorney

Chapter 19.65
BELOW MARKET RATE OWNERSHIP HOUSING REQUIREMENTS

- 19.65.010 Purpose.**
- 19.65.020 Definitions.**
- 19.65.030 Below market rate housing requirements for residential development projects.**
- 19.65.040 Development of on-site below market rate housing.**
- 19.65.050 Below market rate housing in-lieu fee.**
- 19.65.060 Transfer of credits to other sites and/or affordable housing partnerships.**
- 19.65.070 Existing unit conversion program and below market rate in-lieu fee trust fund.**
- 19.65.080 Home ownership unit sales prices and procedures.**
- 19.65.090 Eligibility to purchase a below market rate home.**
- 19.65.100 Rental of below market rate units.**
- 19.65.110 Default, foreclosure, and loss of the unit.**
- 19.65.120 Conflict of interest.**
- 19.65.130 Violations.**
- 19.65.140 Enforcement.**
- 19.65.150 Appeals.**
- 19.65.160 Annual report and administration.**
- 19.65.170 Density Bonus.**
- 19.65.180 Severability.**

19.65.010 Purpose.

This Chapter replaces in its entirety Chapter 19.66 of the Sunnyvale Municipal Code. This Chapter establishes below market rate housing requirements for new residential developments consisting of single family homes, condominiums or townhomes intended for sale to owner-occupant households. New residential developments intended for ownership by a single investor or entity for long-term operation as multi-family rental apartments are not subject to the requirements of this Chapter. Existing below market rate rental dwelling units currently subject to recorded Developer Agreements are subject to the requirements of Chapter 19.67, enacted concurrently with this Chapter, for the remainder of the term of such agreements.

The City of Sunnyvale declares that the citizens of the City with low to moderate incomes are experiencing a shortage of affordable housing opportunities. Whereas the goal of the City is to achieve a balanced community with housing available for households of all income levels, there exists within the City a shortage of homes for sale at prices affordable to persons with low to moderate incomes. Increasingly, persons with low to moderate incomes who work and/or live within the City are unable to purchase homes at prices they can afford; and very low income households are increasingly excluded from living in Sunnyvale.

Federal and state housing subsidy programs are not sufficient by themselves to satisfy the housing needs of low to moderate income households. The City finds that the high cost of newly constructed housing is not affordable to lower- and moderate income households, and that continued new development which does not include housing at prices affordable to these households will further aggravate the shortage of affordable housing.

The City finds that the affordable housing shortage for persons of low to moderate incomes is detrimental to the public health, safety and welfare. The City further finds that it is a public purpose of the City to ensure that housing be made available for persons with low to moderate incomes, and that such supply of housing remains affordable to subsequent purchasers. The City further finds that it is a public policy of the State of California, as mandated by the

requirements for the Housing Element of the City General Plan, to make available an adequate supply of housing for persons of all economic segments of the community, and to insure that such supply of housing remains affordable to subsequent purchasers.

The purpose of this Chapter is to enhance the public welfare, and to assure that future single family, townhome and condominium development contributes to the provision of housing affordable to households with low to moderate incomes. It is an additional purpose of this Chapter to facilitate development of affordable housing at minimal additional cost to housing consumers and taxpayers. A further purpose is to achieve the housing objectives contained in state law, and in the Sunnyvale General Plan.

19.65.020 Definitions.

For the purpose of this chapter, the following words and phrases must be defined as set forth in this section.

(a) “Administering Agency” means the Housing Division of the City of Sunnyvale Community Development Department, or any other agency subsequently selected or assigned by the City Council to administer the City’s Below Market Rate Housing Program.

(b) “Affordable housing” means any decent, safe and sanitary, permanent rental or for-sale housing units developed by non-profit or for-profit entities that are affordable to extremely low, very low, low and/or moderate income households, and are subject to long-term recorded covenants or deed restrictions imposing price and/or rent limits to ensure its affordability for a term of at least thirty (30) years, which covenants must be enforceable by the City and/or state or federal housing finance agencies.

(c) “Applicant” means any person, firm, partnership, association, joint venture, corporation, entity, or combination of entities seeking City permits and/or approvals.

(d) “Area Median Income” (AMI) means the median household income of households residing within Santa Clara County, as determined and published periodically by the State of California Housing and Community Development Department (HCD).

(e) “Assumed Household Size” means, for the purposes of establishing affordable sales prices and/or 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 three-bedroom home is a four-person household. Household members include all adults and children of any age residing in the same dwelling unit on a permanent basis, and functioning as one financial and housekeeping unit.

(f) “Assisted housing” means any project receiving all or a portion of its development funding from any local, State or Federal governmental or non-profit funding source, which meets the criteria for below market rate housing specified in the Ownership Housing Guidelines.

(g) “At one location” means all adjacent land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by other lands owned or controlled by the applicant.

(h) “Below Market Rate ownership housing” means housing developed for sale to and occupancy by lower and moderate income households at prices affordable to moderate income households, as required, regulated and allowed by this Chapter. Below Market Rate housing units are the same as inclusionary housing units for the purposes of this Ordinance.

(i) “Below Market Rate Ownership Housing Guidelines” means the City of Sunnyvale Below Market Rate Ownership Housing Program Guidelines developed by the Housing Division, approved by the Community Development Director, and incorporated by

reference herein, to ensure the orderly and efficient administration of the program in order to implement the requirements of this Chapter.

(j) “Community Development Director” means the Director of the City of Sunnyvale Community Development Department, or his/her designee.

(k) “Dwelling Unit” means a dwelling designed for occupancy by one household.

(l) “Eligible purchaser” means a household which is qualified by the administering agency, according to procedures established by the City, as meeting the requirements of this chapter for the purchase of affordable units; or a public or non-profit housing agency with the capacity to acquire and manage dwelling units for rental to their income-eligible clients.

(m) “Final inspection” means an inspection performed by the City Building Division to verify completion of dwelling unit(s) per approved plans, in order to allow occupancy of such dwelling units.

(n) “Gross annual household income” means the gross, pre-tax income of all adult occupants of the applicant household, as defined further in the Below Market Rate Ownership Housing Guidelines.

(o) “Housing costs” means the monthly mortgage payment (principal and interest), property taxes, association fees, and required homeowner’s insurance for ownership units, and the monthly rent for rental units.

(p) “HUD” means the U.S. Department of Housing and Urban Development.

(q) “Inclusionary housing units” means housing units which are affordable to low or moderate income households as required, regulated, and allowed by this Chapter. Inclusionary housing units are the same as below market rate housing units for the purposes of this Chapter.

(r) “Lower income households” means households with gross annual household incomes at or below eighty percent of area median income for Santa Clara County. The definition for below average income households for the purposes of this ordinance corresponds to the definition of low income households used for State and Federally assisted housing programs.

(s) “Market rate unit” means a dwelling unit which is not subject to the regulations of this Chapter.

(t) “Moderate income households” means households with gross household incomes between eighty and one hundred twenty percent (80-120%) of the area median income (AMI) for the Santa Clara County. The definition of moderate income households for the purposes of this chapter corresponds to the definition of moderate income households for State-assisted housing programs.

(u) “New dwelling unit” means a dwelling unit that is newly constructed on a site, including replacement dwellings.

(v) “Ownership unit” means a dwelling unit intended for sale to home buyer households for occupancy as a primary residence.

(w) “Project” means a residential development project or residential subdivision map application for which City permits and approvals are sought.

(x) “Rental housing project” means a multi-family housing structure under unified ownership, within which separate dwelling units are rented or leased.

(y) “Resale controls” means legal restrictions by which the price of affordable units will be controlled by this chapter for a specified period of time.

(z) “Residential development project” means a project to develop one or more separately owned dwelling units intended for sale to owner-occupant households.

(aa) “Section 8” means the major federal housing program in which eligible very low income and low income households receive financial assistance to rent housing units.

(bb) “Very low income households” means households with annual incomes less than fifty (50) percent of area median income as defined above. The definition of very low income households is used for State and Federally assisted programs, and is included in the lower income household category for purposes of this ordinance.

19.65.030 Below market rate housing requirements for residential development projects.

(a) Projects Subject to Below Market Rate Housing Requirements. The following residential development projects consisting of the construction of new dwelling units and/or the creation of new parcels intended for permanent residential occupancy are subject to the below market rate housing requirements of this chapter:

(1) Residential Project at One Location. An application for a residential development at one location, whether to be constructed at one time or in phases, are subject to the requirements of this chapter if it will result in the creation of:

(A) Nine or more new dwelling units;
 (B) New subdivision maps for condominium conversions resulting in nine or more new ownership units; or

(C) A combination of new dwelling units and condominium conversions together providing for a total of nine or more new dwelling units.

For purposes of this paragraph, “one location” includes all adjacent parcels of land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the applicant.

(2) Concurrent Adjacent Residential Projects. Applications for concurrent adjacent residential developments which together will result in the creation of nine or more new dwelling units through any of the mechanisms described in subsection (1) above, developed by applicants on adjacent properties either at one time or in phases, are subject to the requirements of this chapter. For purposes of this paragraph: “adjacent properties” includes all adjacent parcels of land owned or controlled by the applicants, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned or controlled by the applicants; and “concurrent” applications must include all applications which have been submitted and are concurrently being processed for action by the City. If the property ownership and application for one project contain no parties in whole or in part, or their spouses, who are also a party to the property ownership and application of the concurrent adjacent development, the concurrent applications may be granted an exception to the affordable housing requirements imposed by this chapter upon a showing satisfactory to the decision-making body that neither project receives direct financial benefit by virtue of the concurrent adjacent development.

(3) Sequential Adjacent Residential Projects. Applications by the same owner or applicant for sequential adjacent residential developments which together will result in the creation of nine or more new dwelling units through any of the mechanisms described in subsection (1) above, developed on the same or adjacent properties either at one time or in phases, are subject to the requirements of this chapter. For purposes of this paragraph: “same owner or applicant” includes any person who participates in the development as a full or partial owner or applicant, or a spouse of such person; “adjacent properties” includes all adjacent parcels of land owned or controlled by the owner and/or applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road, or other public or private right-of-way, or separated only by the lands owned

or controlled by the owner and/or applicant; and “sequential” projects include all projects for which applications have been submitted to the City within a period of ten (10) years.

(b) Below Market Rate Housing Requirement. The below market rate housing requirement for any project identified in subsection (a) of this section must be calculated by multiplying the number of new dwelling units or newly created condominium units in the project by twelve and one half percent (12.5%). Projects which generate a below market rate housing obligation of less than a whole unit or a fractional amount more than a whole unit(s) may opt to pay an in-lieu fee for the fractional unit requirement, as specified in Section 19.65.050 of this chapter, or may elect to construct a below market rate unit instead of paying the fractional fee. Those projects which generate a below market rate housing obligation equivalent to a whole unit or multiple units of below market rate housing must provide those below market rate dwelling unit(s) within the project, or alternately, must meet the below market rate housing requirement through one or more of the alternative options provided in subsection (c) of this section.

(c) Alternative Options to Satisfy Inclusionary Housing Requirement. As an alternative to the construction of each affordable dwelling unit within a project as required pursuant to subsection (b) of this section, the below market rate housing requirements of this chapter may be satisfied by one or a combination of the following options:

(1) Payment of an in-lieu fee: Payment of an in-lieu fee pursuant to Section 19.65.050 of this chapter in place of constructing a required affordable dwelling unit; or

(2) Transfer of Credits: Provision of new below market rate unit(s) by the developer at a different site from the proposed market rate housing development, or contribution of land, funding, or in-kind construction or development services to a non-profit sponsored affordable housing project at a different site pursuant to Section 19.65.060 of this chapter, in place of constructing the required below market rate unit(s) on-site.

(3) Existing Unit Conversion: Participation in the Existing Unit Conversion Program pursuant to Section 19.65.070 of this chapter; or

Use of any of these alternative options requires approval by the Approving Body at the time of the development approval, and must result in a greater number of below market rate units and/or a greater level of affordability, or a more desirable type of affordable unit than would otherwise be provided through provision of standard below market rate units on site.

(d) Unit Affordability Requirements.

(1) Term of Restrictions. Below market rate homes must be subject to the requirements of this chapter for a term of thirty years beginning upon sale to an eligible purchaser. These requirements must be enforced by a Below Market Rate Housing Program resale and occupancy agreement to be executed by purchaser and recorded in favor of the City. In the event a home is resold to another eligible purchaser during the term of restrictions, a new term of thirty years will begin upon resale, secured by a new resale and occupancy agreement.

(2) Maximum Sales Price. The maximum allowable sales price for below market rate housing units created pursuant to this Chapter may not exceed a price affordable to median income households (those with incomes at 100% of area median income), based on a monthly housing cost of no more than thirty percent (30%) of monthly gross household income, for a household of the assumed household size for the unit, as defined in Section 19.65.020. The administering agency will establish maximum allowable sales prices for each unit size, based on prudent underwriting standards and best practices for setting affordable home prices, and will publish these sales price limits in the Below Market Rate Ownership Housing Guidelines. The sales prices will be adjusted annually or upon publication of updated area median incomes by HCD. The percentage of median income used to establish maximum sales prices may be adjusted slightly from time to time (within a range of 80% to 110% of AMI) if needed to address

major shifts in housing market conditions, availability of financing, or related economic conditions affecting the demand for below market rate housing, as determined by the Community Development Director.

(3) Eligibility to Purchase. For units developed pursuant to this Chapter, the income and assets of prospective home buyer households may not exceed the limits for a moderate income household as defined in Section 19.65.020 and as further defined in the Ownership Housing Guidelines. Sales contracts for affordable units will not be enforceable, and sale and occupancy of units must not be allowed until the purchasing household is certified by the City as meeting the established income and asset limits.

(e) Development Permit and Tentative Map Procedures.

(1) Development Application. All appropriate maps and other materials submitted with an application for approval of a Residential Development Permit and/or Tentative Map for a project subject to the below market rate housing requirements of this chapter must explicitly identify those residential units within the project sufficient to satisfy the project's below market rate housing requirements, and must also indicate the below market rate housing option(s) pursuant to subsections (b) and (c) of this section that the developer will utilize to fulfill the requirements of this chapter. The identification of affordable units and/or parcels within the project must be provided to ensure compliance with the requirement of this chapter regardless of which of the below market rate housing options is approved by the Approving Body.

(2) Development Conditions. The conditions of approval of a Residential Development Permit and/or Tentative Map must indicate how the development will meet the inclusionary housing requirements of this chapter. Those projects that will include construction of affordable units on site must identify residential units within the project adequate to satisfy the project's below market rate housing requirements. Such identification of affordable units must be provided to ensure compliance with the requirement of this chapter. The conditions of approval of those projects requesting approval of an alternative method of compliance must describe which alternative method is proposed in adequate detail to allow for verification of compliance. In the event developer fails to satisfy the conditions of approval for the alternative method of compliance, the units identified as below market rate units on the application and/or map, as required in subsection 1 above, shall be provided as below market rate units in compliance with this chapter.

(f) Developer Agreement Procedures. Prior to the recording of the Final Subdivision Map or the issuance of any Building Permits for residential units within the project, whichever event occurs first, a Below Market Rate Housing Program Developer Agreement must be signed by the Community Development Director on behalf of the City and by the owners of the property having authorization to encumber the property and by any existing holder of trust deeds on the property. The Developer Agreement must be binding on the heirs, assigns and successors in interest of the property owner, and must be recorded in the Official Records of the County of Santa Clara. The Developer Agreement must include, at the minimum, the following provisions:

(1) Binding of the Project Site. The Developer Agreement must contain the below market rate housing requirements established for the project pursuant to this chapter, and will encumber the entire property on which the project is to be developed with the obligation to fulfill such below market rate housing requirements.

(2) Lien on Designated Parcels. The Developer Agreement must create an enforceable lien on each of the affordable parcels designated in the conditions of project approval, or alternately on every parcel in a project where the in-lieu fee option is chosen, to allow for collection of an in-lieu fee pursuant to Section 19.65.050 of this chapter, regardless of

the option selected to satisfy the below market rate housing requirement for the project. This lien is intended to allow for collection of such in-lieu fee(s) if needed to enforce compliance with the requirements of this chapter, and will be released by the City upon fulfillment of the below market rate housing obligations pursuant to this chapter.

(3) **Selection of Affordable Housing Option.** The Developer Agreement must designate the option selected by the applicant for satisfying the below market rate housing requirements of this chapter. The project developer may subsequently change the designated option for satisfying the project's below market rate housing obligations through an amendment to the project's conditions of approval, approved by the Approving Body upon a written finding that all applicable requirements for the option selected can be met by the Developer. In approving an amendment, the Approving Body may impose reasonable conditions upon the applicant to ensure compliance with the provisions of this chapter. In the event of such an amendment, an amended Developer Agreement must be executed and recorded in accordance with the requirements of this section to reflect the new option selected. Minor amendments to the Developer Agreement may be approved by the Community Development Director.

(4) **Project Covenants, Conditions and Restrictions.** The Developer Agreement must include a provision prohibiting any amendments to a project's Covenants, Conditions and Restrictions that would increase the proportion of the homeowners association assessment payable by any below market rate housing unit, and must create a right of judicial enforcement of this requirement by the City and/or the owner of any affected affordable unit exclusively in favor of the owner of each affordable unit in the development.

(5) **Enforcement.** The Developer Agreement must include a provision providing for the payment by the owner to the City of a reasonable rental value of an affordable unit from the date of any unauthorized occupation or use of the unit, and for the recovery by the City of reasonable attorney fees and costs required to pursue legal action to enforce the agreement.

19.65.040 Development of on-site below market rate housing.

(a) **Below market rate unit standards.** Below market rate dwelling units may include standard-grade interior finishes and amenities consistent with typical interiors of moderately-priced new market rate homes for sale in the region, even if the market rate units in the same project include luxury or high-end interior finishes, provided that the below market rate units comply with the requirements in the Below Market Rate Ownership Housing Guidelines as well as the following standards:

(1) **Unit location.** The affordable dwelling units must be distributed evenly throughout the development project. This distribution requirement may only be waived by the decision-making body upon a finding that such distribution is infeasible for one or more of the following reasons:

(i) Significant topographic or other constraints exist rendering such distribution infeasible; or
 (ii) Substantially improved site design will result from such waiver; or
 (iii) Substantially improved building design and an approved unit amenity level will result from such waiver; or

(2) **Parcel Size.** The parcels on which the affordable units are located must be no smaller than the smallest parcel on which market rate units in the project are to be located.

(3) **Bedroom Count.** The average bedroom count in the affordable units must not be less than the average bedroom count in the market rate units in the project.

(4) Exterior Design. The exterior design of the affordable units must be consistent with that of the market rate units in the development based on exterior design details, materials, and visual appeal, with no significant identifiable differences between the units visible from the street.

(5) Minimum Unit Size. The size of the affordable units must be at least seventy-five percent (75%) of the average size of market rate units with the same number of bedrooms, unless a smaller unit size is allowed by the decision-making body at the time of project approval, with the written findings that a smaller unit size will provide adequate and decent affordable housing, and the smaller units will be compatible with the remainder of the development.

(b) Timing of Completion. Affordable units must be made available for sale and occupancy either prior to or concurrently with the date that the market rate units in a project are made available for occupancy, and in proportion to the below market rate housing requirement applicable to the project. For example, for a project with a twelve and one half percent (12.5%) below market rate housing requirement, at least one affordable unit must receive a certificate of occupancy concurrently with or prior to every seventh market rate unit constructed in the project, until all of the below market rate housing units required in the project have been constructed. The last market rate unit to be completed in the project may not receive a Certificate of Occupancy until the last affordable unit in the project has received a certificate of occupancy, and has been made available for sale as a below market rate unit. Where strict adherence to this timing requirement might create unreasonable delays in issuance of certificates of occupancy for the market rate units, the Community Development Director may approve a modified completion schedule, provided that no unreasonable delays in provision of below market rate units have occurred or are anticipated to occur. This approval may be revoked in the event a developer fails to provide any of the affordable units when required according to the modified schedule.

(c) Recording of Declaration of Restrictions. Prior to the issuance of a Building Permit for an affordable dwelling unit, the property owner having authority to encumber the property and any existing holders of trust deeds on the property must sign an Below Market Rate Housing Program Declaration of Restrictions which subjects the affordable unit to the requirements of this Chapter and the City's Ownership Housing Guidelines, both as amended from time to time, including the specific ownership and occupancy restrictions established for the units pursuant to Section 19.65.030(d). The Declaration of Restrictions will be binding the heirs, assigns and successors in interest of the property owner for the Term, and must be recorded in the Official Records of the County of Santa Clara.

19.65.050 Below market rate housing in-lieu fee.

(a) Fee Authorization. An in-lieu fee may be paid for each affordable unit required pursuant to Section 19.65.030(b) in place of constructing the below market rate housing within the project. If the in-lieu fee option is designated in the recorded Developer Agreement for the project, the Developer Agreement will create a lien on each dwelling unit or parcel in that portion of the development generating the below market rate housing requirement in order to provide for payment of the in-lieu fee pursuant to this Section.

(b) In-Lieu Fee Calculation. The below market rate in-lieu fee for a project subject to the standard 12.5% below market rate housing requirement shall be equal to seven percent (7%) of the sales price of each market rate home in the development. This fee rate is based on the nexus between new housing development and the demand it generates for below market rate housing. The in-lieu fee option is established to provide developers with an alternative way to meet their below market rate housing obligation. The precise amount of the in-lieu fee will be

determined based on 7% of the contract sales price of each market rate home in a project sold to bona fide purchasers for value, as evidenced by appropriate documentation from the escrow officer closing the sale of each unit. The in-lieu fee rate may be modified from time to time upon request of Council, and will be published annually in the City's Fee Schedule. The in-lieu rate applicable to the project shall be the rate in effect at the time the in-lieu fee payment alternative is selected by the applicant and approved by the approving body. For projects paying an in-lieu fee for a fractional unit requirement only, where the developer is providing below market rate units for the remainder of the requirement, the fee amount shall be adjusted appropriately, as described in the Program Guidelines.

(c) **Fee Payment Process.** An in-lieu fee of seven percent (7%) of contract sale price must be paid out of the sales escrow for the sale to a bona fide purchaser of each dwelling unit in the project for which the fee requirement was established. The City will submit a demand into escrow for payment of the required fee upon receipt of contact information for the escrow officer from the developer. All in-lieu fee payments are non-refundable once they have been received by the City.

(d) **Release of Project Encumbrances.** Concurrently with the receipt of the in-lieu fee payment owed from the sale of each home in a project, the City will provide escrow with a signed, recordable release document releasing the home from the below market rate housing encumbrances imposed on that home by the recorded Developer Agreement.

(e) **Below Market Rate In-Lieu Fee Fund.** All below market rate housing in-lieu fees and accrued interest received pursuant to this Chapter must be deposited into a separate special revenue fund, known as the BMR In-Lieu Fee Fund, to be maintained by the City. These funds will be expended at the discretion of the City Council for the purposes of developing or preserving below market rate housing units in the City.

(f) **Annual Adjustment of In-Lieu Fee.** The in-lieu fee rate is published annually in the City's Fee Schedule and may be adjusted from time to time as needed to reflect any significant changes in the nexus between new housing development, the demand it creates for affordable housing, and the City's costs to provide such affordable housing with the BMR in-lieu fees received, as determined by Council.

19.65.060 Transfer of credits to other sites and/or affordable housing partnerships.

(a) A developer of a market rate project may meet the project's below market rate housing obligation off-site in an affordable housing development undertaken by the developer or in partnership with a non-profit developer, when approved by the approving body based on the following findings:

(1) The off-site affordable housing project will provide a greater number of affordable units than would otherwise have been required for the market rate project, and/or will provide an equal number of affordable units required, but at a greater level of affordability.

(2) For projects involving an affordable housing partnership, a review of the financial and legal agreements between the market rate developer and the non-profit partner indicates that the market rate developer is providing reasonable financial and other support to the affordable housing project in exchange for being allowed to satisfy the developer's below market rate housing obligation;

(3) The affordable housing partnership has site control of, and the right to build on the property on which the off-site affordable housing project will be developed;

(4) The off-site affordable housing project can be developed under the current zoning and general plan designation of the proposed site, and the development permit application to develop the off-site affordable housing project has been deemed complete;

(5) The non-profit affordable housing developer has obtained full legal commitments for all necessary financing for the project or the City has approved a plan for the financing of the project;

(6) The affordable housing project can reasonably be expected to be constructed and occupied within two years of completion of the associated market rate project; and

(7) The average number of bedrooms per unit in the non-profit affordable housing project is comparable to the average number of bedrooms per unit of the market rate project for that portion of the affordable housing project receiving the financial contribution from the market rate developer; or the non-profit affordable housing project is designed to serve a special needs group or target population which would not require an equivalent number of bedrooms per unit.

(b) The financial contributions of the market rate developer to the affordable housing partnership must be held in trust by the City for distribution to the non-profit housing developer at such time as other financing has been obtained and the project is ready for construction. In the event the affordable housing project is not constructed within a two-year period of the completion of the market rate project, or if the City otherwise determines that the affordable project is not likely to ever be constructed, the City may transfer such funds to be irrevocably deposited in the BMR in-lieu fee fund established pursuant to Section 19.65.050(e).

(c) More than one market rate developer may participate in an off-site housing partnership with the same affordable housing development, as long as all the findings of this section are made for each market rate development.

19.65.070 Existing unit conversion program and below market rate in-lieu fee fund.

(a) Existing Unit Conversion Program. As an alternative to constructing an affordable unit pursuant to Section 19.65.040, a developer of a project with an obligation for one or more below market rate homes may participate in the Existing Unit Conversion Program. This program allows developers to satisfy their inclusionary housing requirement through the purchase, rehabilitation, and/or preservation of existing housing as long-term affordable units pursuant to the following requirements and the applicable sections of the Ownership Housing Guidelines. Converted units may be sold or rented to lower or moderate income households.

(1) The use of this option must be approved by the approving body as a part of the original development permit.

(2) Developers must convert at least two existing units for each below market rate unit that would otherwise be required to be built, unless a lower conversion ratio is approved by the approving body.

(3) The units must be located within the Sunnyvale city limits.

(4) Recording Below Market Rate Resale and Occupancy Agreement. Converted units intended for sale to owner-occupants shall be secured by a resale and occupancy agreement in essentially the same form used for standard below market rate homes, which shall be recorded upon close of escrow. The buyers and any existing holders of trust deeds on the property must sign the resale and occupancy agreement subjecting the affordable unit to the requirements of this chapter and the Ownership Housing Guidelines, both as amended from time to time, including the specific ownership and occupancy restrictions established for the units pursuant to Section 19.65.030(d). The agreement must be permanently binding on all heirs, assigns and successors in interest of the property owner for the Term, and must be recorded in the Official Records of the County of Santa Clara.

(5) **Timing of Completion.** Converted units must be made available for occupancy either prior to or concurrently with the date that the market rate units in a project are made available for occupancy, as described in Section 19.65.040 of this Chapter, unless a modified schedule for completion is approved by the Community Development Director.

19.65.080 Ownership unit sales prices and procedures.

(a) The owner of an affordable ownership unit, on its sale or resale, must sell the unit to a moderate or lower income household for a price mutually agreed upon by the buyer and seller, provided that this price is not in excess of the maximum sales price set by the administering agency according to the provisions contained in this Chapter and the Ownership Housing Guidelines.

(b) Prior to offering a unit for sale, the owner must send a written Notice of Intent to Sell to the administering agency. The administering agency will then notify the owner of the current maximum sales price. Prior to the close of the sale, the owner must notify the administering agency of the proposed sale price and the administering agency must review the proposed sale to assure conformance with this chapter and with the Ownership Housing Guidelines.

(c) Upon the sale of an below market rate housing unit, the purchaser must be required to enter into a new Affordable Housing Declaration of Restrictions which incorporates all current policies contained within the Affordable Housing Ordinance and Ownership Housing Guidelines.

(d) Closing costs and title insurance must be paid pursuant to the custom and practice in the County of Santa Clara at the time of opening of escrow. No charges or fees must be imposed by the seller on the purchaser of an affordable unit which are in addition to or more than charges imposed upon purchasers of market rate unit, except for administrative fees charged by the administering agency established in the Ownership Housing Guidelines.

(e) The purchaser of an ownership affordable unit must verify in a form acceptable to the City that the unit is being purchased for the purchaser's primary place of residence, and that if this unit ceases to function as his or her primary residence, it will either be sold according to the requirements of this chapter to an eligible household as certified by the administering agency in accordance with the requirements of this Chapter.

(f) The following transfers of title or any interest therein will not be treated as a sale or resale under the provisions of this section provided, however, that the Below Market Rate Restrictions must continue to run with the title to said unit following such transfers:

- (1) Transfers by gift, devise or inheritance to the purchaser-owner's spouse or children, or
- (2) Transfers of title to a spouse as part of a divorce or dissolution proceeding, or
- (3) Acquisition of title or interest therein in conjunction with marriage.

19.65.090 Eligibility to purchase a below market rate home.

(a) The administering agency must establish, consistent with this Chapter, income and asset limits for moderate income households and other reasonable eligibility criteria for purchasers of affordable units to ensure buyers' ability to close escrow, and effective operation of the program; and formulas for establishing maximum housing unit monthly rents and maximum sales prices based on area median household income and household size. The City may adopt additional administrative guidelines as necessary to provide for additional eligibility criteria, or to assure long-term affordability of units.

(b) The administering agency must review the assets and incomes of prospective purchasers and renters, if any, of below market rate homes and must inform them of the requirements of this program.

19.65.100 Rental of below market rate ownership units.

(a) Below market rate ownership units produced in compliance with this Chapter and still owned by the developer may not be rented without prior written approval of the Community Development Director, and if rented, are subject to the rent limits and requirements of Chapter 19.67.

(b) Below market rate ownership units sold to eligible home buyers pursuant to this Chapter may not be rented to other occupants at any time, as set forth in the Ownership Housing Guidelines.

19.65.110 Default, foreclosure, and loss of the unit.

(a) In the event a Notice of Default is recorded on a completed habitable single family dwelling, townhouse, or condominium unit, which has been designated as an affordable unit pursuant to the provisions of this chapter, the City, or an eligible purchaser approved by the administering agency, must have the option to purchase the unit following the recording of the Notice of Default, and the failure of the owner to cure the default within the statutory reinstatement period (i.e. the period commencing with the date of recordation of the notice of default until five business days prior to the date of sale set forth in the recorded notice of sale. The purchase price for the defaulted unit must be the amount that the owner would have received on the date of the foreclosure sale under the resale price provisions of the Housing Guidelines. In addition, all other resale price provisions of the Guidelines must apply including the provisions for an inspection of the premises and for owner responsibility for certain repairs. The eligible purchaser, approved by the administering agency, or the City may exercise the option to purchase by paying any amounts due to holders of liens, including but not limited to encumbrance(s), taxes and assessments; and paying to the owner any balance of the funds remaining after payment of the costs of sale and any costs of repairs chargeable to the owner. The administering agency is authorized to act on behalf of the City to exercise and complete options to purchase under this section.

(b) In the event the City or an approved eligible purchaser does not exercise an option to purchase the completed single-family dwelling, townhouse, or condominium unit prior to the trustee's sale or judicial foreclosure, the unit must be free from the restrictions of this chapter, and the owner must be deemed in compliance with the provisions of this chapter with the exception of the provisions of subsection (c) below. Ownership units which have not yet been completed for occupancy and/or sold to an eligible homeowner, and multiple family apartments will not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure.

(c) In the event of the occurrence of any of the circumstances described in paragraph (1) of this subsection, below, any surplus proceeds remaining after payment of encumbrances on the unit must be distributed as directed in paragraph (2) of this subsection, below.

(1) This subsection must apply to any affordable unit which is:

(A) Sold at a trustee's sale or judicial foreclosure; or

(B) Destroyed and insurance proceeds are distributed to grantee instead of being used to rebuild, or

(C) Condemned and the proceeds thereof are distributed to owner, or in the event of termination, the proceeds thereof are distributed to owner; or

(D) A condominium or townhouse unit and there is a liquidation of the association and distribution of the assets of the association to the members thereof, including the owner;

(2) Surplus proceeds from an affordable unit subject to this subsection must be distributed as follows:

(A) To the owner up to, but not to exceed, the net amount (after the payment of encumbrances, costs of sale, and any cost of repairs chargeable to the owner) that the owner would have received under the resale price provisions of the Affordable Housing Guidelines had the City been able to exercise its option to purchase the unit on the date of the foreclosure sale, destruction, condemnation, evaluation, or liquidation.

(B) The balance of such surplus must be distributed to the City and must be held in the Below Market Rate In-Lieu Fee Trust Fund.

(d) In the event that the unit is destroyed, or condemned, or the condominium association is liquidated, and the proceeds are utilized for the purpose of rebuilding, the unit constructed must be bound by the terms of this chapter for the remaining term of the resale restrictions.

(e) The owner of an affordable unit must not use this property as collateral for an amount exceeding ninety-five percent (95%) of the then-current maximum sales price applicable to that unit, in accordance with the Ownership Housing Guidelines.

19.65.120 Conflict of interest.

Following are those individuals who, by virtue of their position or relationship, are found to be ineligible to purchase or rent a below market rate unit as their residence:

(a) All employees and officials of the City of Sunnyvale or the administering agency who have, by the authority of their position, policymaking authority or influence over City housing programs.

(b) The developer or owner of the affordable unit to be purchased or rented.

(c) The immediate relatives, employees, and anyone gaining significant economic benefit from a direct business association with public employees, officials, developers, or owners who are not eligible to purchase or rent an inclusionary unit.

19.65.130 Violations.

(a) It is unlawful and a violation of this chapter for the developer or owner of an below market rate housing unit or any employee or agent of such developer or owner to sell or rent an affordable unit to anyone who has not first been qualified as eligible by the administering agency.

(b) It is unlawful and a violation of this chapter for the developer or owner of an affordable unit or any employee or agent of such developer or owner to sell or rent an affordable unit to any person who has a conflict of interest as defined in Section 19.65.120.

(c) It is unlawful and a violation of this chapter for the developer or owner of an affordable unit or any employee or agent of such developer or owner to sell an affordable unit for an amount which exceeds the maximum sales price, or to rent an affordable unit for an amount which exceeds the maximum rent prescribed for the affordable unit under Chapter 19.67; and it shall be further unlawful and a violation of this chapter for any such person to solicit, require or accept in connection with the sale or rental of an affordable unit any payment or other contribution of cash, property, or services, from a purchaser or renter, the value of which when added to the purchase price or rent paid for an affordable unit would exceed the maximum selling price or maximum rent prescribed for the affordable unit under this chapter.

(d) It must be unlawful and a violation of this chapter for any person to willfully and knowingly make a false statement or representation, or knowingly fail to disclose a material fact, for the purpose of qualifying as eligible to purchase or rent an affordable unit under this chapter.

19.65.140 Enforcement.

(a) The provisions of this chapter must apply to all agents, successors and assigns of an applicant. No building permit or occupancy permit must be issued, nor any development approval be granted which does not meet the requirements of this chapter. The City may suspend or revoke any building permit or development approval upon finding a violation of any provision of this chapter.

(b) In addition, to the provisions of subsections (a) (c) or (d) or (e) of this section, any purchaser(s) having purchased a below market rate unit for a sale price in excess of that allowed by this Chapter, or any tenants having rented a below market rate unit for rent in excess of that allowed by Chapter 19.67, upon giving written notice to the administering agency, may file a civil action to recover from the owner the amount of any excess sales proceeds or rents charged in excess of those allowed by the provisions of this Chapter or Chapter 19.67, as applicable, and the Housing Guidelines, if the purchaser or tenant met the income eligibility requirements of this chapter and the Housing Guidelines, during the period of time for which the tenant seeks reimbursement of the excess sales proceeds or rents.

(c) Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this chapter, is guilty of a misdemeanor, and upon conviction thereof may be punishable for each offense by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the County jail for a term not exceeding six months, or by both fine and imprisonment. Such person, firm, or corporation must 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 herein provided.

(d) The City may institute injunction, mandamus, or any appropriate legal actions or proceedings for the enforcement of this chapter; however, if the affordable unit is a multiple-family apartment, the City shall not institute a foreclosure action.

(e) In addition to any other available remedy, if it is determined that rents in excess of those allowed by operation of the ordinance codified in this chapter and the Housing Guidelines have been charged to a tenant residing in a below market rate housing unit, the landlord will be liable for a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00), and any excess rent not recovered by a tenant under subsection (b). If the City does not otherwise recover its reasonable attorney fees and other legal costs from the landlord, the City must deduct its reasonable attorney fees and other legal costs from the amounts collected pursuant to this section and deposit the balance into the Below Market Rate In-Lieu Fee Trust Fund.

19.65.150 Appeals.

(a) Any applicant or other person whose interests are adversely affected by any determination in regard to the requirements of this chapter may appeal in accordance with the provisions of Section 19.98.070(c) of the Municipal Code. The appeal must set forth specifically wherein the action taken fails to conform to the provisions of this chapter.

(b) Any person aggrieved by any action involving denial, suspension or revocation of a building or occupancy permit or denial, suspension or revocation of any development approval, or any other action involving the provisions of this chapter may appeal such action or determination in accordance with the provisions of Title 16 of the Municipal Code.

19.65.160 Annual report and administration.

(a) The administering agency will provide an annual informational report to the City Council on the status of the affordable units developed under the provisions of this chapter. The report will include the number, size, type, tenure, and general location of the affordable units as well as the number of resales and rental vacancy rate, if applicable.

(b) In addition to any other powers or duties heretofore prescribed for the administering agency, the administering agency shall have the following powers and duties:

(1) To annually monitor compliance with the provisions of this chapter by all owners and occupants of below market rate housing units developed pursuant to this chapter, and to refer to the City Council for appropriate action any person violating the provisions of this ordinance.

(2) To provide for the administration of this chapter and to make recommendations to the City Council regarding program changes.

19.65.170 Density Bonus

Developers may request a density bonus pursuant to California Government Code §65915-65918 in accordance with the procedures described in Chapter 19.18. Below market rate units developed to satisfy the requirements of this Chapter may be counted, in the appropriate affordability category, toward the number of affordable units required to earn the requested density bonus.

19.65.180 Severability

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid.

Chapter 19.67
EXISTING BELOW MARKET RATE RENTAL HOUSING REQUIREMENTS

- 19.67.010 Purpose.**
- 19.67.020 Definitions.**
- 19.67.030 Applicability.**
- 19.67.040 Affordable rents and rental procedures.**
- 19.67.050 Eligibility to rent a below market rate dwelling.**
- 19.67.060 Conflict of interest.**
- 19.67.070 Violations.**
- 19.67.080 Enforcement.**
- 19.67.090 Appeals.**
- 19.67.100 Annual report and administration.**
- 19.67.110 Severability.**

19.67.010 Purpose.

This Chapter sets forth ongoing affordability requirements for below market rate rental units in existing rental properties subject to Below Market Rate Rental Developer Agreements currently in effect, and for any rental units developed pursuant to Chapter 19.65 as an alternative to development of below market rate ownership units. The City of Sunnyvale declares that the citizens of the City with lower incomes are experiencing a shortage of affordable rental housing opportunities. Whereas the goal of the City is to achieve a balanced community with housing available for households of all income levels, there exists within the City a shortage of housing that is affordable to persons with lower incomes. Increasingly, persons with lower incomes who work and/or live within the City are unable to secure adequate rental housing at rents they can afford.

Federal and state housing subsidy programs are not sufficient by themselves to satisfy the housing needs of lower income households. The City finds that the prevailing rents in Sunnyvale are not affordable to lower-income households.

The City finds that the affordable housing shortage for persons of lower incomes is detrimental to the public health, safety and welfare. The City further finds that it is a public purpose of the City to ensure that housing be made available for persons with lower incomes, and that such supply of housing remains affordable to subsequent tenants. The City further finds that it is a public policy of the State of California, as mandated by the requirements for the Housing Element of the City General Plan, to make available an adequate supply of housing for persons of all economic segments of the community, and to insure that such supply of housing remains affordable to subsequent tenants.

The purpose of this Chapter is to enhance the public welfare, and to assure that prior rental housing developments subject to the requirements of Chapter 19.66 in effect prior to July 2009 continue to contribute to the provision of rental housing units affordable to households with lower incomes, consistent with the contractual obligations entered into in good faith by the owners of such housing developments, for the remaining term of restrictions set forth in each Developer Agreement. A further purpose is to achieve the housing objectives contained in state law, and in the Sunnyvale General Plan.

19.67.020 Definitions.

For the purpose of this chapter, the following words and phrases must be defined as set forth in this section.

(a) “Administering Agency” means the Housing Division of the City of Sunnyvale Community Development Department, or any other agency subsequently selected or assigned by the City Council to administer the City’s Below Market Rate Housing Program.

(b) “Affordable housing” means any decent, safe and sanitary, permanent rental or for-sale housing units developed by non-profit or for-profit entities that are affordable to extremely low, very low, low and/or moderate income households, and are subject to long-term recorded covenants or deed restrictions imposing price and/or rent limits to ensure its affordability for a term of at least thirty (30) years, which covenants must be enforceable by the City and/or state or federal housing finance agencies.

(c) “Area Median Income” (AMI) means the median household income of households residing within Santa Clara County, as determined and published periodically by the State of California Housing and Community Development Department (HCD).

(d) “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 three-bedroom home is a four-person household. Household members include all adults and children of any age residing in the same dwelling unit on a permanent basis.

(e) “Assisted housing” means any project receiving all or a portion of its development funding from any local, State or Federal governmental or non-profit funding source, which meets the criteria for below market rate housing specified in the Rental Housing Guidelines.

(f) “Below Market Rate rental housing” means rental housing which is affordable to lower income households, as required, regulated and allowed by this Chapter.

(g) “Below Market Rate Rental Housing Guidelines” means the City of Sunnyvale Below Market Rate Rental Housing Guidelines developed by the Housing Division, approved by the Community Development Director, and incorporated by reference herein, to ensure the orderly and efficient administration of the program in order to implement the requirements of this Chapter.

(h) “Community Development Director” means the Director of the City of Sunnyvale Community Development Department, or his/her designee.

(i) “Dwelling Unit” means a dwelling designed for occupancy by one household.

(j) “Eligible tenant” means a household which meets the eligibility requirements of this chapter and the Housing Guidelines for rental of a below market rate unit, as determined by the property manager, and as verified by administering agency through annual audits of the property manager’s leasing files and related property management records.

(k) “Gross annual household income” means the gross, pre-tax income of all adult occupants of the applicant household, as defined further in the Below Market Rate Rental Housing Guidelines.

(l) “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 below market rate rental unit.

(m) “HUD” means the U.S. Department of Housing and Urban Development.

(n) “Lower income households” means households with gross annual household incomes at or below eighty percent of area median income for Santa Clara County. The definition of lower income households for the purposes of this ordinance corresponds to the definition of low income households used for State and Federally-assisted housing programs.

(o) “Market rate unit” means a dwelling unit which is not subject to the below market rate rental regulations of this Chapter.

(p) “Property” means a residential rental development subject to the terms of a recorded Sunnyvale Below Market Rate Rental Housing Developer Agreement.

(q) “Rental housing project” means a multi-family housing structure under unified ownership, within which separate dwelling units are rented or leased.

(r) “Rent limits” means legal restrictions by which the rental rates of below market rate rental units will be controlled by this chapter for a specified period of time.

(s) “Section 8” means the major federal housing program in which eligible very low income and low income households receive financial assistance to rent housing units.

(t) “Very low income households” means households with annual incomes less than fifty (50) percent of area median income as defined above. The definition of very low income households is used for State and Federally assisted programs, and is included in the lower income household category for purposes of this ordinance.

19.66.030 Applicability

(a) Properties Subject to Below Market Rate Housing Requirements. Only those rental properties subject to a Below Market Rate Housing Developer Agreement recorded prior to enactment of this Chapter are subject to the requirements of this Chapter. Such rental properties shall be subject to the requirements of this Chapter for the term specified in the Developer Agreement recorded against the property, and shall be released from the requirements of this Chapter at the end of the term.

(b) Below Market Rate Housing Requirement. The below market rate housing requirement for any project identified in subsection (a) of this section is that specified in the applicable recorded Below Market Rate Developer Agreement.

(1) Eligibility to Rent. For units developed pursuant to this Chapter, the income and assets of prospective tenant households may not exceed the limits for a low income household as defined in Section 19.66.020 and as further defined in the Below Market Rate Rental Housing Guidelines. Leases for affordable units will not be enforceable, and occupancy of units must not be allowed until the tenant household is certified by the City as meeting the established income and asset limits.

19.66.040 Affordable rents and rental procedures

(a) Unit Affordability Requirements.

(1) Term of Restrictions. Term is that set forth in the recorded Developer Agreement for the rental property in question.

(2) Maximum Rent. The maximum allowable rent for below market rate rental units regulated by this Chapter may not exceed a price affordable to lower income households with incomes at 70% of area median income, based on a monthly housing cost of no more than thirty percent (30%) of monthly gross household income, for a household of the assumed household size for the unit, as defined in Section 19.67.020. The administering agency will establish maximum allowable rents for each unit size, and will publish these rent limits in the Below Market Rate Housing Guidelines. The sales prices will be adjusted annually or upon publication of updated area median incomes by HCD. The percentage of median income used to establish maximum rents may be adjusted slightly from time to time (within a range of 60% to 75% of AMI) if needed to address major shifts in prevailing market rate rents for comparable dwellings, or related economic conditions affecting the demand for below market rate rental housing, as determined by the Community Development Director. Existing leases may be exempted from the maximum rent limits of this chapter if the rents were within the BMR rent limits in effect at the time the lease was executed or amended, until the unit is vacated, at which

time the rent shall not exceed the maximum allowable rents set forth in the then-current Housing Guidelines.

19.67.050 Eligibility to rent a below market rate rental unit.

(a) The administering agency must establish, consistent with this Chapter, income and asset limits for lower income households and other reasonable eligibility criteria for tenants and prospective tenants of affordable units to ensure their ability to pay rent when due and comply with standard lease terms, and to ensure effective operation of the program; and formulas for establishing maximum monthly rents based on area median household income and household size. The City may adopt additional administrative guidelines as necessary to provide for additional eligibility criteria, or to assure long-term affordability of units.

(b) The rental property owner or manager must review the assets and income of prospective renters of affordable units using the forms and/or procedures provided by the administering agency, and must inform them of the requirements of this program. The administering agency will annually audit the eligibility review and leasing files of the property manager to determine compliance with the rental program requirements of this Chapter.

19.67.060 Conflict of interest.

Following are those individuals who, by virtue of their position or relationship, are found to be ineligible to purchase or rent an affordable unit as their residence:

(a) All employees and officials of the City of Sunnyvale or the Administering Agency who have, by the authority of their position, policymaking authority or influence over City housing programs.

(b) The developer or owner of the affordable unit to be purchased or rented.

(c) The immediate relatives, employees, and anyone gaining significant economic benefit from a direct business association with public employees, officials, developers, or owners who are not eligible to purchase or rent an below market rate unit.

19.67.070 Violations.

(a) It is unlawful and a violation of this chapter for the developer or owner of an below market rate housing unit or any employee or agent of such developer or owner to sell or rent an affordable unit to anyone who has not first been qualified as eligible by the administering agency.

(b) It is unlawful and a violation of this chapter for the developer or owner of an affordable unit or any employee or agent of such developer or owner to sell or rent an affordable unit to any person who has a conflict of interest as defined in Section 19.67100.

(c) It is unlawful and a violation of this chapter for the developer or owner of an affordable unit or any employee or agent of such developer or owner to sell an affordable unit for an amount which exceeds the maximum sales price or to rent an affordable unit for an amount which exceeds the maximum rent prescribed for the affordable unit under this chapter; and it must be further unlawful and a violation of this chapter for any such person to solicit, require or accept in connection with the sale or rental of an affordable unit any payment or other contribution of cash, property, or services, from a purchaser or renter, the value of which when added to the purchase price or rent paid for an affordable unit would exceed the maximum selling price or maximum rent prescribed for the affordable unit under this chapter.

(d) It must be unlawful and a violation of this chapter for any person to willfully and knowingly make a false statement or representation, or knowingly fail to disclose a material fact,

for the purpose of qualifying as eligible to purchase or rent an affordable unit under this chapter or to obtain an owner-builder building permit.

19.67.080 Enforcement.

(a) The provisions of this chapter must apply to all agents, successors and assigns of an owner of property subject to this chapter. The City may take appropriate legal action upon finding a violation of any provision of this chapter.

(b) In addition, to the provisions of subsections (a) (c) or (d) or (e) of this section, the tenant(s), upon giving written notice to the administering agency, may file a civil action to recover from the owner the amount of any excess rents and utilities charged in excess of those allowed by the provisions of this chapter and the Rental Housing Guidelines, if the tenant met the income eligibility requirements of this chapter and the Rental Housing Guidelines, during the period of time for which the tenant seeks reimbursement of the excess rents and utilities.

(c) Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this chapter, will be guilty of a misdemeanor, and upon conviction thereof must be punishable for each offense by a fine of not more than five hundred dollars (\$500.00) or by imprisonment in the City jail for a term not exceeding six months, or by both fine and imprisonment. Such person, firm, or corporation must 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 must be punishable as herein provided.

(d) The City may institute injunction, mandamus, or any appropriate legal actions or proceedings for the enforcement of this chapter; however, if the affordable unit is a multiple family apartment, the City shall not institute a foreclosure action.

(e) In addition to any other available remedy, if it is determined that rents and utilities in excess of those allowed by operation of the ordinance codified in this chapter and the Rental Housing Guidelines have been charged to a tenant residing in an below market rate housing rental unit, the landlord must be liable for a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00), and any excess rent and utilities not recovered by a tenant under subsection (b). If the City does not otherwise recover its reasonable attorney fees and other legal costs from the landlord, the City must deduct its reasonable attorney fees and other legal costs from the amounts collected pursuant to this section and deposit the balance into the Below Market Rate In-Lieu Fee Trust Fund.

19.67.090 Appeals.

Any applicant or other person whose interests are adversely affected by any determination in regard to the requirements of this chapter may appeal to the Community Development Director in writing within thirty days of such adverse event. The determination of the Community Development Director will be final. The appeal must set forth specifically wherein the action taken fails to conform to the provisions of this chapter.

19.67.100 Annual report and administration.

(a) The administering agency will provide an annual informational report to the City Council on the status of the affordable units maintained under the provisions of this chapter. The report will include the number, size, compliance status, and general location of the affordable units, as well as the number of units, if any, that were released from the program restrictions due to termination of the period of affordability required by the applicable developer agreement, and the rental vacancy rate of the affordable units, if applicable.

(b) In addition to any other powers or duties heretofore prescribed for the administering agency, the administering agency shall have the following powers and duties:

(1) To monitor compliance with the provisions of this chapter and to refer to the City Council for appropriate action any person violating the provisions of this ordinance.

(2) To provide for the administration of this chapter and to make recommendations to the City Council regarding program changes.

19.67.110 Severability

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid.

Attachment C
Non-Routine CDD HO-01

Non-Routine

Number CDD HO-01

Name Revise Sunnyvale Municipal Code - 19.66 Affordable Housing and Single Room Occupancies to incorporate recent amendments, modifications or clarifications to the Ordinance and BMR Program.

Description Purpose:
 Revise the existing BMR Ordinance to incorporate Council actions outlined in the Affordable Housing Strategy and the Housing and Community Revitalization Sub-element Update. In addition, the revised BMR Ordinance will provide additional clarity to the process, affordability requirements, and the overall intent of the program.

Overall Benefits:
 Revise the BMR Ordinance so that it is clear and easy to read while providing enhanced options to develop affordable housing and the legal framework needed for staff to enforce the affordability requirements.

Anticipated Results:

1. A comprehensive Report to Council that identifies and outlines the cumulative changes approved by Council over the last several years.
2. A revised BMR Ordinance that includes additional options for developers to build affordable housing in Sunnyvale.
3. A revised BMR Ordinance that specifies the primary affordability requirements and enforcement mechanisms, which provide the legal framework needed to enforce the requirements of the BMR Program.

Lead Department Community Development

Fiscal Year 2011-12

New or Cont. Continuing

Planned Complete Date 11/29/2011

Managers

Role	Manager	Hours			
Lead	De Frenchi, Ernie	Mgr FY1:	100	Mgr FY2:	0
		Staff FY1:	0	Staff FY2:	0
Support	Berry, Kathryn	Mgr FY1:	40	Mgr FY2:	0
		Staff FY1:	0	Staff FY2:	0
Support	Hom, Hanson	Mgr FY1:	20	Mgr FY2:	0
		Staff FY1:	0	Staff FY2:	0
Support	Ise, Suzanne	Mgr FY1:	40	Mgr FY2:	0
		Staff FY1:	0	Staff FY2:	0
Support	Ryan, Trudi	Mgr FY1:	10	Mgr FY2:	0
		Staff FY1:	30	Staff FY2:	0

Interdep	Boco, Robert	Mgr FY1:	40	Mgr FY2:	0
		Staff FY1:	0	Staff FY2:	0

Total Hours FY1: 280

Total Hours FY2: 0

Attachment D
Summary of Current and Proposed Ordinance Changes

Item	Provisions in Current Ordinance	Proposed Provisions
Fractional Units	Fractional units are rounded up or down to the next whole unit to determine number of BMR units to be provided within project.	Allow developers to pay an in-lieu fee or round up to provide an additional unit.
In-Lieu Fee	Allowed for developments of 19 or fewer homes, with Director approval. Fee (for each BMR unit required) is equal to the difference between market rate sales price and BMR sales price.	Allow an in-lieu fee option on any development subject to BMR requirements as long as the approving body approves of this in advance. Fee is equal to 7% of each home's sales price (reconciled to average sales price at end of sales phase).
Geographic Applicability	Applicable to development projects of 9 or more homes in any zoning district other than R-0, R-1, R-1.5 or R-1.7/PD.	Applicable to residential projects of 9 or more homes in all zoning districts where residential development is allowed.
Transfer of Credits	This option is not offered in the current Ordinance	Allow developers to provide BMR units at an alternative site rather than just in the market-rate development.
Acquisition/ Rehabilitation/ Preservation	This option is not offered in the current Ordinance	Allow developers to acquire and rehabilitate a market-rate property and place a long-term affordability covenant on the property, or rehabilitate and preserve an expiring affordable housing property and extend the term of affordability.
Alternative Housing Types	This option is not offered in the current Ordinance	Provide BMR homes within the market-rate development of slightly different housing types and/or sizes than the market rate homes.
Density Bonus	Complex local density bonus provisions in addition to current state law.	Refer to current state density bonus law and adopt any local policies needed to implement or augment state law.
BMR Unit Standards	BMR units shall not be distinguished by interior or exterior design, amenities, construction, or materials.	Require BMR units have a minimum floor area of 75% of average size market rate units with the same number of bedrooms. Allow developers to install standard grade or better interior finishes and amenities in BMR units, even if market-rate units include luxury or high-end finishes.
Timing of Units Offered for Sale	Developer is required to notify to the City when unit will be ready for occupancy.	Require developers sell BMR units in proportion to timing of market rate unit sales.

<p>BMR Initial Sales Prices</p>	<p>19.66.040(c) BMR Sales Price:</p> <p>Established by the city or its designee at levels affordable to households at eighty percent to one hundred twenty percent of area median income with consideration for construction costs.</p>	<p>BMR Sales</p> <p>Establish the maximum BMR sales price at a price affordable to households at to 100% AMI, subject to periodic shifts within a range of 90-110% of AMI, at Director's discretion.</p> <p>This maximum price limit would also apply to resales (see below).</p>
<p>Resale Prices and Procedures</p>	<p>BMR Resale Price:</p> <p>The original purchase price, plus a .33% increase (if applicable) in the housing component of the Bay Area Consumer Price Index, plus substantial capital improvement expenditures. Or the fair market value, whichever is less.</p> <p>Tolling of Time (Time limit for resales): City has 180 days to accept the homeowner's offer to resell the home, and 90 days to close escrow after accepting the offer. If unit is not sold within this time frame, the unit converts to market rate.</p>	<p>Allow homes to be resold for a price mutually agreed to between buyer and seller, provided it does not exceed the current maximum BMR sales price as published annually by the City (based on a target affordability level of 100% of AMI). This allows for potential equity growth roughly equivalent to what would occur if the resale price was based on 100% of the CIP increase during homeowner's term of ownership, but is a more streamlined method of setting resale prices. Homeowner's resale and occupancy restrictions also limit the resale price to the lesser of the BMR price, or the appraised value of the unit, to encourage good maintenance of the unit.</p> <p>Time limit for resales: If a BMR unit is unable to be sold at the established sales price within 180 days of being listed for sale, seller required to pay excess proceeds to city (this is in resale & occupancy agreement).</p>