

**Mountain View, Ca Municipal Code:**  
**Affordable and Inclusionary Housing**

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Chapter 36 Zoning

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**DIVISION 1 GENERAL**

**SEC. 36.80. Council findings.**

Housing prices and rents have increased at a significantly higher rate than general wages. The lack of affordable housing in Mountain View forces many residents to pay a very high percentage of their income for housing or to commute considerable distances, adding to air pollution and traffic congestion in Mountain View and adjacent communities. The lack of affordable housing has made it more difficult to recruit workers from out of the area, in general, especially workers in lower-paying jobs, potentially affecting the economic vitality of the community; and New housing developments do not, to any appreciable extent, provide housing affordable to low- and moderate-income households, and continued new development which does not include housing for low- and moderate-income households will serve to further aggravate the current shortage of affordable housing by reducing the small remaining

supply of undeveloped land. Following a nexus analysis to evaluate the impact of new commercial and industrial development on the existing housing shortage, the council has determined that such new development generates an increased demand for affordable housing which must be mitigated. Further, the council finds that the below-market-rate program and the housing impact fee program are a necessary part of the city's efforts to meet the regional housing needs of the Bay Area as required by state law.

The housing element of the general plan includes a goal to provide housing opportunities for people of all economic levels (Goal E); a policy supporting the development of reasonably priced housing (Policy 13); and Action 13.b, which calls for implementation of a below-market-rate (BMR) program in which new housing developments over a certain size provide at least ten (10) percent of the units to low- and moderate-income households. Policy 8 and Action 8.a state that the city should review commercial and industrial developments to determine whether they create a demand for housing and to mitigate the effect of such development on housing. This mitigation is identified as a "linkage" or housing impact fee.

The below-market-rate housing program and the housing impact fee program will balance the needs of the city and the goals of our general plan while having a minimum impact on the investment interests of the landowners and developers. The program is required by the public necessity and general welfare, and promotes the orderly development of the city. (Ord. No. 1.99, 1/12/99; Ord. No. 01-02, 1/8/02.)

### **SEC. 36.81. Definitions.**

For purposes of this article only, the following definitions shall be used in the interpretation and construction of this article.

"Addition" shall mean an extension or increase in floor area of an existing nonresidential development project subject to this section.

"Affordable housing" means housing which costs a very low-, low- or moderate income household no more than approximately thirty (30) percent of its gross monthly income. Costs included in the calculation of income for ownership housing are monthly mortgage principal and interest payments, homeowners' insurance, property taxes and homeowner association fees, where applicable. Costs included in the calculation of income allocated to rental housing are monthly rent.

"Below-market-rate (BMR) unit" means an ownership or rental unit under this program which is affordable to households with low or moderate incomes as defined in this chapter.

"Density bonus" means an entitlement to build additional residential units above the maximum number of units permitted by the applicable zoning designation or precise plan.

"Existing floor area" means legally existing gross floor area at the time of application for a zoning permit or legally existing floor area that was demolished not more than one (1) year prior to the filing of the application for a zoning permit.

"Gross floor area" means the floor area enclosed within the walls of a building and measured from the outside perimeter of said walls, expressed in square feet and fractions thereof.

“Gross household income” means the household income of all adult members of the household.

“Moderate-income household” means a household whose gross income is between eighty (80) percent and one hundred (100) percent of the median household income, adjusted for size, for Santa Clara County as published periodically by the State Department of Housing and Community Development.

“Low-income household” means a household whose gross income is between fifty (50) percent and eighty (80) percent of the median household income, adjusted for size, for Santa Clara County as published periodically by the State Department of Housing and Community Development.

“Very low-income household” means a household whose gross income is less than fifty (50) percent of the median household income, adjusted for size, for Santa Clara County as published periodically by the State Department of Housing and Community Development.

If the indexes referenced in this section, or successor indexes, are no longer published by the State Department of Housing and Community Development, then a successor index shall be selected by the city manager. In selecting the successor index, the city manager shall choose an index published by a federal, state or county agency that most closely corresponds with the previous index.

“Housing fund” means the City of Mountain View housing fund established pursuant to Section 36.86.

“Housing impact fee” means the fee established pursuant to Section 36.91 for nonresidential development projects.

“In-lieu fee” means a fee paid by a developer into the city’s housing fund in place of providing the required below-market-rate units.

“Market-rate unit” means a housing unit or the legal lot for such unit offered on the open market at the prevailing market rate for purchase or rental.

“Nonresidential development project” means the construction, addition or placement of a structure used for any commercial or industrial purpose as defined in Chapter 36 of the Mountain View City Code and shall include the nonresidential portion of the gross floor area in a combined or mixed-use project.

“Resale controls” mean legal restrictions by which the price of below-market-rate units and the eligibility of purchasers or renters shall be restricted to ensure that the unit remains affordable to moderate-income households.

“Residential development” includes, without limitation, detached single-family dwellings, duplexes, multiple-family dwelling structures, condominium or townhouse developments, condominium conversions and land subdivisions intended to be sold or rented to the general public. “Mixed projects” shall mean projects containing both rental units and for sale units.

“Zoning permit” means any of the several discretionary permits described in Chapter 36 of the Mountain View City Code authorizing land uses, development, construction or alteration of uses or buildings within a zoning district. (Ord. No. 1.99, 1/12/99; Ord. No. 01-02, 1/8/02.)

## **DIVISION 2 RESIDENTIAL DEVELOPMENT: BELOW-MARKET-RATE HOUSING PROGRAM**

## **SEC. 36.82. General requirements.**

Percentage requirement. All residential developments subject to the BMR program requirements shall provide at least ten (10) percent of the total number of dwelling units or parcels within the development as BMR units or pay a fee in lieu thereof, according to the terms of this article.

Size of project. The BMR requirement shall apply to new or converted residential developments with three (3) or more ownership units; five (5) or more rental units; or mixed projects of six (6) or more residential units.

In-lieu fees for fractions of units. If the calculation of BMR units results in a fraction of a unit, either an in-lieu fee shall be paid to the city's housing fund or the development shall provide an additional unit to satisfy the requirement. The in-lieu fee shall be based on a formula that considers the difference between the price of market-rate units and the price of below-market-rate units as specified in the BMR administrative guidelines.

Developments with nine or fewer units. For residential developments with nine or fewer units, the developer may elect to either pay an in-lieu fee or provide a BMR unit.

Concurrent development. All BMR units in a residential development and phases of a development shall be constructed concurrently with or prior to the construction of market-rate units.

Location and design of BMR units. All BMR units shall be reasonably dispersed throughout the project and shall contain, on average, the same number of bedrooms and shall be comparable to the design of the market-rate units in terms of appearance, materials, and finished quality of the market-rate units in the project. There shall not be significant identifiable differences between BMR and market-rate dwelling units which are visible from the exterior of the dwelling units and the size and design of the dwelling units shall be reasonably consistent with the market-rate units in the development. BMR units shall have the same access to project amenities and recreational facilities as market rate units.

Targeted households. All BMR rental units shall be rented only to qualified low-income households, and all BMR ownership units shall be sold only to qualified moderate-income households pursuant to procedures and guidelines established by the city.

Term. BMR units shall be maintained as affordable housing for a period of at least fifty-five (55) years.

No density bonus. Compliance with the provisions of this article does not entitle a residential development to a density bonus.

Administrative guidelines. The city shall adopt, by resolution, BMR administrative guidelines necessary for the implementation of the provisions of this article.

Administration. The BMR program shall be administered by the community development department or its designee. (Ord. No. 1.99, 1/12/99.)

## **SEC. 36.83. Resale controls on ownership units.**

In order to maintain the availability of the housing units constructed pursuant to the requirements of this article during the term of the BMR limitation, the following resale controls shall apply to units sold by the original purchaser and all subsequent purchasers: The price received by the seller of a BMR unit shall be limited to the lesser of:

The original purchase price increased by an amount equal to one-third (1/3) of any cumulative increase in the consumer price index for all urban consumers for the San Francisco-Oakland-San Jose area since the date of the previous sale, with adjustments for any substantial capital improvement expenditures or loss in value due to deterioration resulting from deferred maintenance or specific damage; or  
An amount equal to a price affordable to a household earning one hundred (100) percent of median income; or  
The appraised value.

BMR units offered for sale or sold pursuant to the requirements of this article by the original purchaser and all subsequent purchasers shall be offered for sale first to the city or its designee. The city or its designee may assign its right to an individual private buyer who meets the eligibility criteria for BMR units.

The BMR units shall be sold and resold from the date of the original sale only to persons determined to be eligible for BMR units according to the terms of this article.

The owners of any BMR unit shall incorporate as a part of the grant deed conveying title of any such BMR unit a declaration of restrictions, stating each of the resale controls imposed pursuant to this article, subject to the approval of the city attorney. The city attorney may also require a separate notice of below-market-rate resale controls and restrictions, or other notice document, subject to the city attorney's approval, to be recorded against any BMR dwelling unit subject to this article. The grant deed and any other recorded documents as required by the city attorney pursuant to this article shall afford the grantor, grantee and/or the city the right to enforce said resale controls.

For the first resale after the fifty-five (55) year term, a BMR ownership unit may be sold as a market-rate unit, but the difference between the BMR and market-rate unit prices must be deposited in the city's housing fund. After the fifty-five (55) year term, a purchaser of the unit who pays market rate shall not be subject to the provisions of this article. (Ord. No. 1.99, 1/12/99.)

#### **SEC. 36.84. Determination of rents for rental units.**

The monthly rental rate for each BMR unit shall be within the range of fifty (50) percent to eighty (80) percent of county median income and be based on no more than thirty (30) percent of the qualifying tenant's gross monthly income, according to the procedures set forth in the BMR Housing Program Guidelines. The rent range of fifty (50) percent to eighty (80) percent of county median income may be adjusted annually to reflect adjustments in the median household income published periodically by the state department of housing and community development for Santa Clara County. (Ord. No. 1.99, 1/12/99.)

#### **SEC. 36.85. Eligibility requirements.**

The city or its designee shall select potential occupants of BMR units from a list of those persons qualified on the basis of household income, relationship between household size and the size of available units, and further criteria and procedures to be established by the city in the BMR administrative guidelines.

Each purchaser of a BMR dwelling unit shall certify, prior to close of escrow, in a form acceptable to the city or its designee, that said unit is being purchased and shall be maintained as the purchaser's primary place of residence.

The household income of each renter of a BMR unit shall be verified annually by the city or its designee to confirm the household's continued eligibility for the unit. (Ord. No. 1.99, 1/12/99.)

#### **SEC. 36.86. Housing fund.**

A housing fund is hereby established for the deposit of all in-lieu fees and other penalties and payments made to the city under the BMR program. The purpose of the fund is to assist in providing housing that is affordable to very low, low- and moderate-income households and cover administrative costs of the BMR program. (Ord. No. 1.99, 1/12/99.)

#### **SEC. 36.87. Enforcement.**

The provisions of this article shall apply to all agents, successors and assigns of an applicant proposing or constructing a residential development governed by this article. No zoning permit, tentative subdivision map or occupancy permit shall be issued for a residential development after March 15, 1999 unless it is in compliance with the terms of this article.

The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to costs and expenses for enforcement of the provisions of this article, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys fees.

Any individual who sells or rents a restricted unit in violation of the provisions of this article shall be required to forfeit all monetary amounts so obtained in excess of the allowed resale price as set forth in Section 36.83 or rental rates as set forth in Section 36.84. Such amounts shall be added to the city's housing fund. (Ord. No. 1.99, 1/12/99.)

#### **SEC. 36.88. Appeals.**

Appeals of a BMR condition in a zoning permit or parcel or subdivision map shall be to the community development director or designee. The director shall hold a public hearing to consider any appeals in accordance with the procedures of this chapter, Section A36.54, et al. Appeals of any decision of the community development director pursuant to this program may be made to the city council in accordance with this chapter, Article A36.80, et al. (Ord. No. 1.99, 1/12/99; Ord. No. 3.03, 4/22/03.)

#### **SEC. 36.89. Grandfather provision.**

The following residential projects shall be exempt from the provisions of this article:  
Projects for which a valid zoning permit has been issued and is in effect as of March 15, 1999; or

Projects for which an official zoning permit application, consisting of all required and supplemental materials, has been submitted to and accepted by the community development department by March 15, 1999. (Ord. No. 1.99, 1/12/99.)

## **DIVISION 3 COMMERCIAL AND INDUSTRIAL DEVELOPMENT: HOUSING IMPACT FEE PROGRAM**

### **SEC. 36.90. Housing fund.**

Housing fund. Housing impact fees shall be deposited in the City of Mountain View housing fund. The city finance and administrative services director shall maintain the funds in a subaccount separate from other funds in the Mountain View housing fund account.

Administration. The housing fund shall be administered by the community development director, who shall have the authority to govern the housing fund consistent with this chapter, and to prescribe procedures for said purpose, subject to approval by the council. Purposes and use of funds.

Moneys deposited in the housing fund along with any interest earnings on such moneys shall be used solely to increase and improve the supply of housing affordable to households of very low, low and moderate income; including; but not limited to, acquisition of property and property rights; cost of construction, including costs associated with planning, administration and design, as well as actual building or installation, as well as any other costs associated with the construction or financing of affordable housing; and reimbursement to the city for such costs if funds were advanced by the city from other sources. To the maximum extent possible, all moneys should be used to provide for additional affordable housing and services. Moneys may also be used to cover administrative expenses not reimbursed through processing fees, including consultant and legal expenses related to the establishment and/or administration of the housing fund. No portion of the housing fund may be diverted to other purposes by way of loan or otherwise.

Moneys in the housing fund shall be used to construct, acquire, rehabilitate or subsidize very low-, low- and moderate-income housing and/or to assist other governmental entities, private organizations or individuals in the construction, rehabilitation and reimbursement of city-advanced funds. Moneys in the housing fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the community development director and city council determine is appropriate to accomplish the purposes of the housing fund. The housing fund moneys may be extended for the benefit of rental or owner-occupied housing or housing services.

Expenditures by the community development director from the housing fund shall be controlled, authorized and paid in accordance with general city budgetary policies. Execution of contracts related to the use or administration of housing fund moneys shall be in accordance with standard council policy.

Construction projects assisted with housing impact fee funds shall comply with the prevailing wage requirements of the Federal Community Development Block Grant (CDBG) Program or the HOME Investment Partnership (HOME) Program or successor programs. (Ord. No. 01-02, 1/8/02.)

**SEC. 36.91. Fee; calculation of fee; alternative to payment of fee; adjustment and waivers; exemptions.**

Housing impact fee. A housing impact fee is hereby imposed on all developers of nonresidential projects that involve the construction of new floor area, except as otherwise set forth herein.

Calculation of housing impact fee.

The housing impact fee for nonresidential development projects shall be charged on a per-square-foot basis for all net new gross floor area, including all additions where floor area is increased, with a specific per-square-foot amount set for each nonresidential land use category and amount of floor area identified in Table 1 below. The amount of the fee shall be computed as follows: (Gross Square Feet Nonresidential Floor Area Minus Existing Floor Area) X (Applicable Fee as listed in Table 1) = Housing Impact Payment. The amount of each such fee shall be established by resolution of the city council and shall be adjusted annually as a part of the city’s annual budget process by the percentage change in the Consumer Price Index for the San Francisco-Oakland-San Jose area for the previous year.

In calculating the fee, the building official shall use those fees in effect by resolution of the city council at the time of the issuance of the building permit or, if no building permit is required, at the time of issuance of a use or other discretionary permit.

The community development director shall determine the appropriate land use category as set forth in Table 1 below for each new nonresidential development project.

**TABLE 1  
HOUSING IMPACT FEE REQUIREMENTS**

<b>Land Use Category</b>	<b>Fifty Percent (50%) of Full Fee</b>	<b>Full Fee</b>
Office/ High Tech/ Industrial	New gross floor area between 1 and 10,000 square feet	New gross floor area that exceeds 10,000 square feet
Commercial/ Retail/ Entertainment	New gross floor area between 1 and 25,000 square feet	New gross floor area that exceeds 25,000 square feet

Hotel	New gross floor area between 1 and 25,000 square feet	New gross floor area that exceeds 25,000 square feet
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Alternative to payment of a housing impact fee. As an alternative to payment of the housing impact fee, a developer of a nonresidential development project may submit a request to mitigate the impacts of such development through the construction of residential units, the dedication of land or provision of other resources. Such requests may be granted in the sole discretion of the city council, if the city council determines that such alternative will further affordable housing opportunities in the city to an equal or greater extent than payment of the housing impact fee.

Adjustment, reduction or waiver. An adjustment, reduction or waiver of the fees required by this section may be granted by the city council for nonresidential development projects under the following circumstances:

Upon the remodeling of a building to add square footage, the appropriate housing impact fee shall be paid only on the additional square footage.

If the nonresidential development project is in whole or part a replacement for space previously on the site, but vacated or demolished in the twelve (12) months prior to the filing of the application for a zoning permit for the new construction or remodel, credit shall be given for the space vacated or demolished or to be vacated or demolished at the rate applicable to the prior use of that space.

If the nonresidential development project is constructed for a specific use involving no employees or fewer than one (1) employee per two thousand (2,000) square feet of gross floor area, the project may be eligible for a waiver of the fees. To be eligible for a waiver, the building must be designed and built such that it cannot be converted to a use capable of housing a larger number of employees except by major reconstruction. The burden of proof shall be on the applicant. If a waiver is granted, a "Notice of Conditional Waiver of Housing Impact Fee" shall be recorded in the Santa Clara County Office of the Recorder.

If a subsequent change in the use or structure of the building occurs which involves additional employees, the waiver granted herein shall be deemed revoked, subject to a hearing before the zoning administrator who shall make a recommendation on the revocation to the city council. The decision of the city council shall be final.

If, upon evaluation of facts presented by the applicant, there is an absence of any reasonable relationship or nexus between the impact of the development and the need for housing, the project shall be eligible for a waiver of the fees.

Exemptions. This fee shall not apply to developers of nonresidential projects which fall within one or more of the following categories:

Buildings which are owned and at least seventy-five (75) percent occupied by governmental or nonprofit agencies and organizations.

Any building which is damaged or destroyed by fire or natural catastrophes so long as the total square footage of the repaired or replaced building remains the same.

Grandfather provision. The following nonresidential projects shall be exempt from the provisions of this article:

Projects for which a complete application has been submitted by December 11, 2001 and final approval for a valid zoning permit has been issued and is in effect as of March 9, 2002; or

Projects for which a complete application has been submitted by December 11, 2001 and final approval for a valid zoning permit has been issued and is in effect as of March 9, 2002, and which are subsequently the subject of a revised application except that any increase in the amount of originally approved floor area shall be subject to the provisions of this article. (Ord. No. 01-02, 1/8/02.)

### **SEC. 36.92. Processing requirements.**

Filing requirements. The zoning administrator shall develop administrative guidelines for processing applications subject to the requirements of this section.

Payment of fee. Unless otherwise mandated and preempted by state law, the housing impact fee shall be paid prior to the issuance of the first grading or building permit. (Ord. No. 01-02, 1/8/02.)

### **SEC. 36.93. Enforcement.**

Payment of the housing impact fee is the joint and several obligation of the applicant and/or the property owner for the subject nonresidential development project. In the event of administrative error, the city shall provide the applicant with a written notice and the applicant shall be required to pay the fees within thirty (30) days.

The provisions of this article shall apply to all owners of the property, which is the subject of the application, and developers, agents, successors and assigns of an applicant proposing or constructing a nonresidential development governed by this article. No zoning permit shall be issued for a nonresidential development after March 9, 2002, unless it is in compliance with the terms of this article.

The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to costs and expenses for enforcement of the provisions of article, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys' fees. (Ord. No. 01-02, 1/8/02.)

### **SEC. 36.94. Appeals.**

Appeals of a housing impact fee condition in a zoning permit or parcel or subdivision map shall be filed with the clerk of the city council within ten (10) calendar days of the notice of decision. The council shall hold a public hearing to consider any appeals in accordance with the procedures of Chapter 36, Section 36.49.5. Appeals of any decision of the community development director pursuant to this program may be made to the city council in accordance with Chapter 36, Article VIII. (Ord. No. 01-02, 1/8/02.)