CITY OF SAN MATEO
BELOW MARKET RATE (INCLUSIONARY) PROGRAM

I. INTENT

It is the intent of this resolution to establish requirements for the designation of housing units for moderate, lower, and very low income households in development projects containing residential dwelling units.

II. DEFINITIONS

Whenever the following terms are used in this resolution, they shall have the following meanings:

(a) "Affordable Housing" means affordable ownership housing or affordable rental housing. Affordable ownership housing is housing affordable to households whose incomes do not exceed one hundred twenty percent (120%) of the area median income (low or moderate income households).

Affordable rental housing is housing affordable to households whose incomes do not exceed eighty percent (80%) of the area median income (very low or lower-income households).

(b) "Applicant" means any person, firm, partnership, association, or any other entity who submits the planning application and/or building permit for the construction of new dwelling units.

(c) "Area Median Income" means the median household income for San Mateo County as published annually by the California Department of Housing and Community Development

(d) "Below Market Rate (BMR) Unit" means an affordable housing unit.

(e) "Density Bonus" means entitlement to build additional residential units above the maximum number of units permitted pursuant to the existing General Plan, applicable specific plan and/or zoning designation.

(f) "Lower Income" means households whose income does not exceed that as defined in Health and Safety Code section 50079 for the County of San Mateo as published annually by the California Department of Housing and Community Development, as adjusted for household size.

(g) "Market Rate Unit" means a dwelling unit where the rental rate or sales price is not restricted by this resolution.

(h) "Moderate Income" means households means households whose income does not exceed that as defined in Health and Safety Code section 50093 for the County of San Mateo as published annually by the California Department of Housing and Community Development.

(i) "Occupancy Standards" means the minimum household size upon which qualification and pricing for BMR units is based.

(j) "Ownership Units" means housing units offered for sale including, but not limited to, single family homes, condominiums, other common interest developments and mutual housing associations.

(k) "Rental Units" means housing units offered for lease or rent.

(l) "Very-low Income" means households whose income does not exceed that as defined in Health and Safety Code section 50105 for the County of San Mateo as published annually by the California Department of Housing and Community Development

III. BELOW MARKET RATE HOUSING REQUIREMENTS – GENERAL

(a) **Applicability.** The requirements of this program shall apply to all development projects that include five (5) or more residential units or parcels which involve:

1. New construction of rental or ownership housing units, including mixed use developments and addition of units to existing projects, or
2. Subdivision of property for single family or duplex housing development, or
3. Conversion of rental apartments to condominium or other common interest ownership under Chapter 26.65 of the Municipal Code.
4. Conversion of nonresidential use to residential units.

(b) **Number of BMR Units Required.** For residential development projects of eleven (11) or more units, the number of BMR units must be constructed as follows:

1. Ownership Units
   a. Fifteen percent (15%) of the proposed units shall be set aside for occupancy by and shall be affordable to Moderate Income households.

2. Rental Units
   a. Fifteen percent (15%) of the proposed units shall be set aside for occupancy by and shall be affordable to Lower Income households.

In determining the number of BMR units required, any decimal fraction .5 or above shall be rounded up to the nearest whole number.

Fees in-lieu of constructing required BMR units shall not be allowed except for the provisions for fractional units defined below.

(c) **Fractional Unit Fees.** In the following situations a fractional fee will be collected instead of construction of a BMR unit:

1. For residential development projects consisting of 5-10 units or parcels, or

2. When the calculation of the BMR units in development projects of 11 or more units or parcels results in a fractional unit less than .5.

In either scenario, applicant has the option to provide an additional BMR unit instead of the fee.

The fractional fee will be established based on the typical cost to develop a BMR unit and will be adopted by resolution by the City Council on an annual basis. The fee will be collected at the time the building permit is issued and shall be deposited into the City Housing fund.

(d) **Occupancy Standards.** Priority for occupancy shall be for households meeting the following size requirements.

1 bedroom units	-	no restriction
2 bedroom units	-	Minimum two person occupancy
3 bedroom units	-	Minimum three person occupancy

Other households for such units will be on a lower priority.

IV. OWNERSHIP UNIT AFFORDABLE HOUSING STANDARDS

(a) **Price of Units.** The maximum sales price of BMR units shall be limited to a price that is affordable to a household earning between 100-110% of area median income, adjusted for household size, with payments not to exceed between 30-35 percent of the gross monthly income, less insurance and property taxes and homeowners association dues. The City Council at least once per year shall adopt by resolution maximum allowable sales prices, adjusted by unit size, within the ranges established above and based on prevailing interest rates and prior experience in maintaining an adequate sized list of qualifying buyers. The sales prices for BMR units shall be established at the time of building permit issuance for each project.

For units which provide congregate care or personal assistance for residents, the costs of care shall be separate from housing costs, and shall not be included in the pricing formula.

(b) **Sales Restrictions.** BMR units shall be sold or resold only to eligible moderate or lower-income households. The City, or its designees, shall determine the eligibility of such households. A deed restriction, covenant, and/or other instrument enforceable by the City, limiting the resale of such units to eligible households shall be recorded in the chain of title of all BMR units. The duration of such resale restrictions shall be 45 years, and shall be reapplied and recorded upon each resale of the unit.

The deed restriction shall provide that the City have the first right of refusal to purchase the unit. The City's option to purchase may be assigned to a qualifying moderate or lower income household.

The City or its designee shall be responsible for selection and qualification of buyers in accord with its marketing polices regulating affordable housing. The seller shall pay costs associated

with buyer selection, qualification and unit sales.

(c) **Unit Appreciation**. Each unit offered for resale will be subject to resale restrictions in which the effective sales price (sales price less City subsidy) will be computed to equal the average increase in moderate income for the San Francisco MSA during the period of ownership.

(d) **Occupancy Restrictions**. Units shall only be occupied by their owners. Renting, leasing, subleasing or subletting shall not be permitted for more than two months in any year. Violation of these occupancy restrictions will be grounds for termination of the occupancy.

V. RENTAL UNIT AFFORDABLE HOUSING STANDARDS

(a) **Rental Rates.** The monthly rent to be charged for a BMR unit in a rental project shall not exceed 30% percent of the gross monthly income for households earning between 50-70 percent or less of area median income, adjusted for household size. The City Council shall at least once per year adopt by resolution maximum allowable rental rates, adjusted by unit size, within the ranges established above and based on prior experience in maintaining a list of qualifying renters. In no event shall the annual rent increase exceed 4% from the prior year. The surplus median income increase in a capped year can be carried over and combined in the following years, as long as the 4% cap per year is maintained.

For units which provide congregate care or personal assistance for residents, the cost of care shall be separate from housing costs and shall not be included in the rental formula.

(b) **Move-in Costs.** Total costs and security deposits to occupy a unit shall be limited to first and last month's rent, plus a cleaning deposit not to exceed one month's rent.

(c) **Rental Restriction.** Occupancy of BMR rental units and qualification of eligible lower-income tenants shall be the responsibility of the project owner or an authorized agent of the owner. Annual leases shall be offered to tenants of BMR units. Income qualifications of the tenants shall be verified upon annual lease renewal. If a tenant's income rises above the 90% area median income for a Lower Income Unit or above 60% area median income for a Very Low Income Unit, the unit shall become a market rate unit and the next comparable unit available will become a BMR unit, unless the tenant chooses to vacate the unit.

Each project owner shall submit an annual report to the City identifying for each BMR unit the monthly rent, vacancy information for the prior year, income and income verification for tenants, and other information as required by the City.

The rental restrictions shall be in force for the life of the building.

(d) **Change in Tenure from Existing BMR Rental Units to Ownership.** In the event the owner of any development that contains BMR Rental Units chooses to offer those units for sale after the initial occupancy of the BMR units as rentals, a new BMR agreement shall be executed and recorded. The agreement shall describe the number, location and sales prices of the BMR units

offered for sale. The BMR Ownership units shall be affordable to moderate income households in accordance with the BMR program provisions in place, unless the project utilized the State Density Bonus, in which case the sales prices shall be affordable to the household income levels identified in the original BMR agreement at the sales prices for those household income levels adopted by City Council resolution on an annual basis.

If the change in tenure is part of a condominium conversion, all provisions of Chapter 26.65 of the Municipal Code shall be followed.

If the change in tenure is not associated with a condominium conversion, the BMR Rental Unit tenants must be adequately noticed and offered relocation assistance as follows:

1. Each of the BMR tenants shall receive written notification by registered mail from the property owner of the intention to sell at least one hundred and eighty (180) days prior to termination of tenancy. This notification shall include the information regarding relocation, right to purchase, and lease benefits available.

2. Each of the BMR tenants shall be given notice by the property owner of an exclusive right to contract for the purchase of his or her respective unit upon terms and conditions of the BMR program as it pertains to Ownership Units. This right shall run for a period of not less than ninety (90) days from the date of the initial notification of termination of tenancy.

3. Relocation assistance shall be given to all BMR tenants who do not exercise their right to purchase as follows:
    a. A relocation allowance equal to three month's rent at the tenant's rate in effect at the time the notice of termination of tenancy is filed shall be paid to the eligible tenant within twenty (20) days after the tenant notifies the owner of his intention to vacate the unit or the owner notifies the tenant to vacate the unit.
    b. The applicant shall provide a list of active comparable rental units in San Mateo County at least once each month beginning from the initial notification of termination of tenancy.
    c. In projects that consist of twenty-five (25) or more BMR Rental Units, the applicant shall provide a relocation specialist to assist displaced tenants in finding new housing.

VI. SUBDIVISIONS

A subdivider of land for single family or duplex development resulting in eleven (11) or more parcels shall provide BMR units equivalent to at least fifteen percent (15%) of the density permitted on the subdivided lots.

VII. UNIT SIZE, TYPE AND DESIGN

BMR units shall:

(a) Have exterior design and appearance compatible with and substantially the same as market rate units within the project, including landscaping;

(b) Be distributed throughout the development project as approved by the City;

(c) Have similar access to the unit from the exterior as market rate units;

(d) Contain proportionately the same number of bedrooms as market rate units,

(e) Generally be of comparable size to similar market rate units, or

They may be up to 10% smaller than market units if they meet the following minimum sizes:

Unit Type	Regular Units	Senior Units
studio units	450 square feet	405 square feet
one bedroom units	600 square feet	507 square feet
two bedroom units	900 square feet	602 square feet
three bedroom units	1100 square feet	950 square feet

(f) Have access to all on-site amenities; and

(g) In phased development projects, be constructed proportionately in each phase.

(h) Interior unit amenities such as floor covering, appliance and other fixtures, shall be specified in the BMR agreement executed prior to issuance of building permit and may differ from market rate units, but must at a minimum be UL or AGA listed.

VIII. ALTERNATIVES

An applicant may propose an alternate means of compliance with the BMR program subject to the following provisions:

(a) **Variation of the bedroom count of BMR Units**. Based on Council adoption of community priorities, an applicant may propose a different bedroom mix in BMR units than a straight pro rata of the Market Rate Units as long as the total bedroom count is the same or more, and the total number of BMR units equal 10% or more of the project. For example, the City may accept fewer BMR units in exchange for those with more bedrooms, or conversely it may agree to more BMR units that have smaller bedroom counts. The Council will adopt its community priorities by resolution annually at the same time it adopts the BMR rental and sales prices.

(b) **Size of BMR units.** In projects where the Market Rate Units all exceed 2000 square feet, the BMR units may be up to 20% smaller than the Market Rate Units.

(c) **Off Site Construction Alternative.** In order to approve the Off-Site Construction alternative, the City Council must make the following findings:

i. The number of affordable units provided by the Off-Site Construction alternative equals or exceeds that required under the on-site requirement in Section III of these Guidelines; and

ii. The level of affordability provided by the Off-Site Construction alternative is the same or lower than that required by the on-site requirement in Section III of these Guidelines; and

iii. The alternative is consistent with the General Plan and Housing Element and the provisions of these Guidelines; and

iv. Financing or a viable financing plan, which may include public funding, is in place for the off-site BMR units; and

v. The off-site location is suitable for the proposed BMR Units and furthers the goals of Affirmatively Furthering Fair Housing, consistent with the Housing Element; and

vi. The off-site BMR units will be available for occupancy prior to or concurrently with development of the main project. If the main development project is phased, the off-site BMR units comply with Section VII(g) of these Guidelines.

(d) **Applicant-Proposed Alternative.** An applicant may propose other ways to comply with the on-site BMR requirement in Section III of these Guidelines if City Council determines, based on substantial evidence provided by the applicant, that it will provide as many or more BMR units at the same or lower income levels, or will otherwise provide greater public benefit than that provided under the on-site requirement in Section III of these Guidelines. The proposed alternative compliance option must be identified in an Affordable Housing Plan that is submitted as part of the Planning Application. A Planning Application shall not be deemed complete until the Affordable Housing Plan is approved. The applicant shall bear all costs associated with demonstrating that the compliance option meets the BMR requirements. In order to approve the Applicant-Proposed Alternative, the City Council must make the following findings:

i. The number of affordable units provided by the Applicant-Proposed Alternative equals or exceeds that required by the on-site requirement in Section III of these Guidelines;

ii. The level of affordability provided by each of the BMR units meets the affordability threshold or lower affordability threshold(s) as required under the on-site requirement in Section III of these Guidelines;

iii. If the Applicant-Proposed Alternative does not meet these requirements in (i) and (ii), it will provide greater public benefit than that provided under the on-site requirement in Section III of these Guidelines;

iv. Financing or a viable financing plan, which may include public funding, is in place for the Applicant-Proposed Alternative; and

v. The Applicant-Proposed Alternative is consistent with the General Plan and Housing Element and the provisions of this Guidelines.

(e) **Agreement with City for Financing.** If the City enters into a financing agreement with the applicant, the parties may agree to alter the requirements of Section VII, subsections (a) through (g), above.

(f) **Significant Number of Affordable Units**. If an applicant exceeds the maximum percentage of affordable units set forth in the state density bonus law for low or very low income rental or ownership units or moderate income ownership units, the City will consider an applicant's request to alter the requirements of Section VII, subsections (a) through (g), above, in connection with its review of the planning application for the project and may reject or accept the request in its sole discretion.

(g) **Specialized Services**. If a project will include units for residents requiring specialized services (such as health care for senior residents), the City will consider an applicant's request to alter the requirements of Section VII, subsections (a) through (g), above, in connection with its review of the planning application for the project and may reject or accept the request in its sole discretion.

IX. ELIGIBILITY REQUIREMENTS

Only households qualifying as very low, lower or moderate income households shall be eligible to occupy BMR units. Preference shall be given to persons residing or working within San Mateo. Eligibility shall be determined in conjunction with policies adopted by City Council resolution.

X. ADMINISTRATION

(a) **Responsibilities.** The City or its designee shall be responsible for administering ownership BMR units. The project owner shall be responsible for administering BMR rental units.

The City's Community Development Director or a designee shall be responsible for administration of the BMR program, including, but not limited to, determinations regarding calculation of the number of BMR units required, pricing, design, review of feasibility analyses, qualification of tenants, and long-term program compliance. The City may prepare administrative guidelines to further clarify program requirements.

(b) **Application Process**. At the time of filing a planning application for a development project subject to the BMR program, the applicant shall include the proposed number of BMR units, including their size and number of bedrooms.

(c) **BMR Agreement**. Prior to the issuance of a building permit the applicant shall enter into a BMR Agreement with the City which will be recorded against the property and shall include the following:

1. The number of BMR units and their location;
2. The unit sizes and the number of bedrooms per dwelling unit;
3. The affordability level and initial rent or sales price;
4. The interior unit amenities which would differ from market-rate units, including, but not limited to, floor coverings, countertops, appliances, plumbing and electrical fixtures; and
5. The schedule for production of BMR units in phased developments.

XI. DENSITY BONUSES FOR RESIDENTIAL DEVELOPMENTS

(a) **Bonus for Affordable Units.** Provision of the BMR units entitle an applicant to request a density bonus in accordance with Government Code section 65915.

(b) **Additional Incentives.** In addition to any density bonus, applicant may request additional incentive(s) or concession(s) in accordance with Government Code section 65915 and San Mateo's Density Bonus Ordinance at Section 27.16.060 of the Municipal Code.

The additional incentive(s) or concession(s) to be provided shall be determined by the City at the time of the application approval in accordance with Government Code section 65915 and the City's Density Bonus Ordinance. The City will require information from the applicant to determine the necessary incentive or concession, or may hire a consultant to prepare an analysis at the expense of the applicant.

The following describes the density bonus amount and number of incentives that are allowed by providing the required affordable units in the BMR program.

Tenure	Percent Affordable	Income Target	Density Bonus Allowed	Developer Incentives
Ownership	15%	Moderate	10%	1
Rental	15%	Lower	27.5%	1

Applicant may provide any combination of additional affordable units and/or deeper affordability which may be eligible for a higher density bonus and/or more incentives or concessions based on the provisions of State Density Bonus law and the City's Density Bonus Ordinance as long as the City's minimum affordability requirements are met. However, the City

will not accept Very Low units in an ownership project unless a reserve is established that can be utilized by lower income owners to fully pay for future expenses related to increases in homeowners' association dues or other assessments, such that the overall housing cost of homeownership is maintained at an affordable level.

(c) **BMR Program Applicable.** The affordable units provided under the provisions of the Density Bonus Ordinance shall comply with all requirements of the BMR program.