

**TOWN OF LOS GATOS  
BELOW MARKET PRICE HOUSING PROGRAM GUIDELINES**

I. Purpose

- A. Purpose: The overall purpose of the Below Market Price (BMP) Housing Program is to provide the Town of Los Gatos with a supply of affordable housing. While the program is available to all qualified applicants, the general intent of the program is to provide affordable housing for households who work or currently live in Los Gatos. The main goal is to increase the housing supply for households that have median and low incomes compared to the median income for Santa Clara County and meet the housing needs identified in the Town’s General Plan Housing Element. The Program further intends to ensure, to the greatest extent possible, that rent and re-sale of these housing units will remain affordable to median and low income levels for the longest feasible time as approved by an authorized body. Although the Town has a fee-in-lieu of constructing actual units option for defined circumstances, the primary objective of the BMP Program is to obtain actual “rental” or “for sale” housing units rather than equivalent funds. All off-site BMP units shall be constructed within the Town of Los Gatos. The construction and occupancy of the BMP unit is determined according to these Town Council established guidelines and authorizing ordinances.
- B. Enabling Legislation: The Below Market Price Program is governed by Division 6 of the Town Code. The BMP Program is administered under these Below Market Price Housing Program Guidelines.

II. Below Market Price Housing Requirements – General

- A. Applicability: The BMP Program requirements shall apply to all residential development projects that include five (5) or more residential units or parcels which involve:
1. New construction of ownership or rental 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 condominiums or other common interest ownership, or
  4. Conversion of non-residential use to residential use.
- B. Number of BMP Units: All residential developments consisting of five (5) or more units are required to participate in the BMP Program. The requirements for participation increase by development size as shown below:

1. Five (5) to Nineteen (19) market rate units: The developer shall provide a minimum number of BMP units equal to ten (10) percent of the number of market rate units.

2. Twenty (20) to one hundred (100) market rates units: The developer shall provide a minimum of BMP units as determined by the following formula:

$$\text{Number of BMP units} = (.225 \times \text{total \# of market rate units}) - 2.5$$

This formula acts to increase the number of BMP units required, as a percentage of market-rate units, from 10% to 20% over the range of 20 to 100 market rate units.

3. One hundred and one (101) units or more: The developer shall provide a minimum number of BMP units equal to twenty (20) percent of the number of market rate units.

BMP dwellings within a project of rental units shall also be rental units. BMP units within a project of owner-occupied units shall also be designated as units for purchase. BMP units within a project that contains both rental and owner-occupied units shall also be designated as both rental and as units for purchase, in a ratio similar to that of the market rate units.

The Town and developer may negotiate to provide more BMP units than required by the rules listed in these guidelines to fulfill a development's Community Benefit requirements.

C. Fraction of a BMP Housing Units: In determining the number of BMP units required, any decimal fraction of .5 or above shall be rounded up to the nearest whole number. Decimal fractions below .5 shall be rounded down to the nearest whole number.

D. Residential In-Lieu Payments: The general intent of the BMP Program is to provide the Town of Los Gatos with a supply of affordable housing for households who work or currently live in Los Gatos. However, there may be circumstances when the construction of the BMP unit is impractical or there are unusual circumstances that make the construction of the unit inconsistent with Town policy. The Town, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit in the case of Planned Unit development with an underlying zone of HR or a residential developments with five (5) to nine (9) units. Prior to approving the in-lieu fee alternative, the applicant must demonstrate to the satisfaction of the Town why a BMP unit cannot be (1) developed on the same site as the market rate units, and if it cannot be provided on the same site then, (2) develop at an appropriate off-site location within the Town limits. If the developer provides sufficient justification that both of these alternatives are not viable, then a fee in-lieu option may be considered. The required in-lieu fee is as established by a separate resolution and is to be paid to

the Town prior to issuance of the certificate of occupancy for the market rate residential unit that triggered the BMP requirement. The provision for a BMP unit applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

The in-lieu fee shall be equal to the amount of six (6) percent of the building permit valuation for the entire project. The total building permit valuation shall be determined by the Town Building Official.

Fees shall be paid prior to or at time of final occupancy as follows:

1. Multi-Family Owner Occupied Developments: Prior to occupancy of each phase, a proportional amount of fees shall be paid, as determined during the Planning approval process.
2. Multi-Family Renter Occupied Developments: Prior to occupancy of each phase, a proportional amount of fees shall be paid, as determined during the Planning approval process.
3. Single-Family Planned Developments: At time of final occupancy for each unit.

E. Housing Fund: In-lieu fees will be deposited into the Town's Affordable Housing Fund. Applications and or recommendations for use of remaining funds will be reviewed as received. Possible use of the funds include, but is not limited to, the following:

1. Subsidizing the cost of owner occupied units to make them affordable to low/moderate income households
2. Purchasing rental units to make them affordable to low/moderate income households
3. Purchasing land for the future development of affordable housing
4. Developing affordable housing
5. Supplementing of affordable housing projects developed through the Los Gatos Redevelopment Agency
6. Funding administration of the program, as approved by the Town Council in its annual budget process

F. Off-Site Construction: The Town Council may consider off-site construction of BMP units for continuum care facilities and for Hillside Residential (HR) Zone District and residential developments with five (5) to nine (9) units projects that have provided sufficient justification to the Town that an on-site BMP unit is not viable.

G. Phasing of the Construction of On- and Off-Site BMP Units: On- and off-site BMP units shall be constructed and Certificate of Occupancies secured concurrently with or prior to the construction of the market-rate units. The BMP requirement will be calculated on the basis of the whole development. The Town

Council may grant an exception to these phasing requirements during the Planned Development project approval process for condominium conversion developments.

- H. Affordability Agreement: The developer of “for sale” BMP units shall enter into an affordability agreement with the Town. The agreement will ensure that the BMP units are sold to qualified buyers and will be released by the Town through the escrow process once the BMP is sold to a qualified buyer.

### III. Characteristics of BMP Units

- A. Size of units: The size and design of BMP dwelling units shall be reasonably consistent with the market rate units in the project. The Town and developer may negotiate regarding the size of units if more units than required are to be provided under the Community Benefit requirements. BMP units should be provided proportionately in the same unit type mix (number of bedrooms) as the market rate units. In consideration of the household size of the households on the current program interest list, the Town and developer may negotiate to provide a greater proportion of a particular unit type. There shall not be significant identifiable difference between the BMP and market-rate units visible from the exterior. The size and design of the BMP units must be reasonably consistent with the market-rate units in the development.
- B. Location of units: BMP units shall be dispersed throughout the development, to the extent feasible; in all buildings, on each floor, and in each project phase. A concentration of BMP units in one location is not desirable and will generally not be allowed.
- C. Finish of units: The external appearance of BMP units should be indiscernible to that of the market rate units in the project. The internal finish of BMP units should be identical to that of the market rate units in the project, except that the developer may request Town approval of substitutions for luxury interior finishes, appliances, or fixtures, if such substitutions do not violate any Town code requirement.
- D. Project Facilities: All project facilities and amenities, including parking, must be available on the same basis to the BMP units as to the market rate units in the project, to the extent feasible.

### IV. The BMP Unit Purchase Process; Buyer Selection, and BMP Unit Sale and Resale Procedures.

- A. Owner Occupied Units
  - 1. Applicant Eligibility

- a. Household Income: In order to be eligible to purchase an owner-occupied BMP unit, an applicant's annual household income must be no greater than 100% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA). Household assets, such as real property, may also be considered in determining eligibility.
  - b. Housing Costs: In order to be eligible to purchase an owner-occupied BMP unit, an applicant must also demonstrate the ability to pay monthly housing costs. The monthly housing cost shall include the following factors:
    1. unit price
    2. current lending rates
    3. estimated property taxes
    4. estimated homeowner's private mortgage insurance (PMI) costs  
homeowners' association fees, if applicable
    5. other expenses as determined necessary by the lender
  - c. Mortgage Financing: All persons must qualify for their own mortgage financing for the purchase of available BMP units without assistance from the Town. Qualifications must include the ability to pay taxes, insurance, closing costs and any homeowner association fees in addition to the mortgage. All loans used to purchase or refinance BMP units must be fixed rate and fixed term without balloon payments to minimize homeowners exposure to increased risks of mortgage default.
  - d. Required Down payment: A homebuyer shall have a minimum down payment that is equivalent to at least 10% of the BMP purchase price and is required to document the source of all down payment funds. The minimum 10% down payment is exclusive of any other supplemental down payment assistance grant or loan programs available from other agencies.
2. First Time Home Buyers: The Below Market Price (BMP) Program is for First Time Home Buyers. A First Time Home Buyer, by definition, is an applicant whose name has not appeared on a residential title in the counties covered by the Association of Bay Area Governments (ABAG) or Association of Monterey Bay Governments (AMBAG) which are Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma for at least three (3) years prior to application. Exception is made consistent with

the Federal Housing and Urban Development (HUD) definitions (e.g. for people who were homeowners prior to a divorce, a displaced homemaker, a single parent who has only owned with a former spouse, a widow/widower of a veteran, etc.) and for tenants residing in a rental apartment proposed to be converted to a condominium or other common interest ownership prior to a Notice of Intent to Convert the development to an ownership residential unit.

- B. Buyer Selection: A point system is used to establish a ranking of applicants for the purchase of an available unit. Applicants will be ranked according to total points and must have at least one point to be eligible to purchase a unit. In addition, applicant households must contain at least the same number of persons as the number of bedrooms in a unit, at the time of application, in order to be eligible to purchase that unit, if the unit contains three bedrooms or more.

All points are calculated per household, not for each individual within the household. For example, a household in which two members are senior citizens would receive six points for senior citizen status, not twelve points for two members having senior citizen status. Points are awarded as follows:

1. **Six points:**

- a. Senior citizens who reside in the Town at the time of application and have lived in the Town for at least the prior two years. A senior citizen is defined as any person 62 years of age or older at time of application or married couples living together when at least one spouse is 62 years of age or older at time of application.
- b. Senior Citizens who have lived in the Town for at least two years and have moved out of the Town within the last five years prior to the time of application.
- c. Disabled persons who reside in the Town at the time of application and who have lived in the Town for at least the prior two years. The definition of “disabled” for the purpose of assigning points under this section shall be that used by the U.S. Social Security Administration for the purpose of determining eligibility for Social Security disability benefits.
- d. Households required to relocate their residence as a result of Council action or mobile home park closure.
- e. Regular Full-Time and Regular Part-Time Town employees as defined in the Town's Personnel Rules but excluding Los Gatos Monte-Sereno Police Officers, who have been employed by the Town for a period of no less than 12 months prior to the time of application.

- f. Single heads of household with dependent children who reside in the Town at the time of application and have lived in the Town for at least the prior two years.
  - g. All licensed pre-school and public or private K-12 school employees of schools and districts geographically located in and serving the Town, and who have been employed in such capacity for at least one year at the time of application.
  - h. All certified emergency first responders (e.g. sworn police officers, fire fighters, and emergency medical technicians and paramedics) who have been employed in such capacity for at least one year at the time of application by an agency serving the Town.
2. **Four points:**
- a. Persons who live in the Town of Los Gatos at time of application and who have lived in the Town at least the prior two years.
  - b. Persons who work in the Town of Los Gatos at time of application and have worked in the Town for at least the prior two years.
3. **Two points:**
- a. Households who have lived in the Town for at least 10 years and have moved out within the last ten years prior to the time of application.
  - b. Household size is worth two points per person.
4. **One point:**
- a. Households who live or work within Santa Clara County at the time of application.
  - b. Households with an annual household income at or below 60% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA).
5. A lottery will be used to rank each qualified applicant in the case of a tie.
6. Applicants are provided the opportunity to purchase available units in order of point ranking, from most points to least points. An applicant has two opportunities to refuse to purchase a unit before being removed from the current applicant pool.

7. Applicants who do not qualify for a particular project or who are not provided the opportunity to purchase a unit in a particular project shall retain their eligibility to apply for future projects.
8. An applicant must obtain pre-approval for a mortgage loan within one week after notification of eligibility to purchase a unit. The applicant must submit documentation of loan approval within three weeks of notification of eligibility to purchase a unit.
9. Exception to the Buyer Selection Process: An exception to the Buyer Selection Process may be granted to a resident of a rental apartment that is proposed to be converted to an “owner occupied” condominium or other common interest ownership development. In order to qualify for the exception, the resident must have resided in the rental apartment prior to the issuance of the Notice of Intent to Convert the development to an ownership project and shall meet the financial eligibility requirements to qualify for a BMP unit. The resident shall be provided first right of refusal, regardless of point ranking, for units in the following order:
  - a. The unit they reside in if it is designated as a BMP unit.
  - b. Any other available BMP unit.

C. Determination of Initial Selling Price: BMP units shall be priced to be affordable to households in two income categories: Median Income Households (those whose income is above 80%, but no greater than 100%, of the County Median Income); and Low Income Households (those whose income is above 50%, but no greater than 80%, of the County Median Income).

1. Fifty percent (50%) of the units in a project shall be priced to be affordable to Median Income Households; fifty percent (50%) shall be priced to be affordable to Low Income Households. Whenever the calculations result in fractional units, then the number of units priced to be affordable to Low Income Households shall be rounded up to the next whole number, and the number of units priced to be affordable to Median Income Households shall be rounded down to the next whole number, including zero (0). The following table applies this formula to projects with 1, 2, and 3 units:

Total Number of BMP Units in Project	Units Priced for Low Income Households	Units Priced for Median Income Households
1	1	0
2	1	1
3	2	1



The Town and developer may negotiate regarding the affordability mix of units, to fulfill a development’s Community Benefit requirements.

The affordability level of a unit shall be for the purpose of setting the initial selling price only, and do not prevent its sale to any household eligible to purchase an owner-occupied BMP unit, as set forth in these Guidelines.

2. Annually, the Town shall set the initial unit sales price for each unit type (number of bedrooms), for each of the two income categories. These initial sales prices shall be set using the most recent Median Family Income (MFI) figures from the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA), and through the following calculations:

- a. For units to be priced to be affordable to Median Income Households: the average of the 100% MFI annual income and the 80% MFI annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

Example: 100% MFI (4-person/4 bedroom) = \$105,000

80% MFI (4-person/4 bedroom) = \$75,700

Average MFI = (\$105,000 + \$75,700) divided by 2  
= \$90,350

Average MFI X Multiplier = Initial Sales Price

1. Assumptions of household size by size of unit are as follows:

	Household Size
Studio	1
1 Bedroom	1
2 Bedroom	2
3 Bedroom	3
4 Bedroom	4

These assumptions of household size by size of unit shall be for the purpose of setting the initial sales price only, and do not prevent the sale of any unit to any household eligible to purchase an owner-occupied BMP unit, as set forth in these Guidelines.

- b. For units to be priced to be affordable to Low Income Households: the average of the 80% MFI annual income and the 50% annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

Example: 50% MFI (4-person/4 bedroom) = \$ 52,500

80% MFI (4-person/4 bedroom)= \$75,700

Average MFI = (\$52,500 + \$75,700) divided by 2  
= \$ 64,100

Average MFI X Multiplier = Initial Sales Price

- c. Calculation of Multiplier. A Multiplier shall be calculated, based on reasonable assumptions about unit sales prices, based on the most recent comparable sales of BMP units; current lending rates, as determined by the most recent Primary Mortgage Market Survey (PMMS) conducted by the Federal Home Loan Mortgage Corporation (Freddie Mac); and related costs; and using the following formula:

1. Determination of Total Housing Cost: Sample sales price - 10% down payment = mortgage. Annual debt service on mortgage + annual property taxes + annual homeowners fees + annual private mortgage insurance (PMI) = Total Annual Housing Cost.
2. Determination of Minimum Household Income: Assuming one-third of household income goes for housing expenses, Total Annual Housing Cost x 3 = Minimum Annual Household Income.
3. Determination of Multiplier: Sample Sales Price/Minimum Annual Household Income = Multiplier.

Copies of the initial sales prices, and the calculations made, shall be available on request from the Town's Community Development Department.

- D. Deed Restrictions/Request for Notice: Council approved Deed Restrictions shall be recorded with each Below Market Price dwelling unit. In addition to the Deed Restriction, the Town shall also require that a Request for Notice for the benefit of the Town be recorded for each lender Deed of Trust record on title.

E. Resale of Units:

1. If the owner elects to sell his/her unit, the Town must be notified in writing by the owner.
2. When a Below Market Price dwelling unit becomes available for resale, the Town shall set the resale price and make the unit available for purchase through the BMP process.
3. The Town determines the resale price in accordance with the deed restriction recorded on the property.
4. The homeowner, as noted in the recorded Deed Restriction, is responsible for paying all closing costs (including commissions or fees).

F. Occupancy of Units:

Consistent with the deed restriction that will be recorded on the subject property, the household purchasing a BMP unit must occupy the unit as his or her primary residence during his or her ownership of said unit.

**V. Requirements for BMP Rental Development**

A. Administration: The program shall be administered by the Town or its designee.

B. Applicant Eligibility

1. Household Income: In order to be eligible to rent a BMP rental unit, a household's annual income must be no greater than 80% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA). Priority will be given to those households whose income is less than 50% of the MFI. Household assets may also be considered in determining eligibility.
2. Ability to Pay Rent: A tenant's ability to pay monthly rent will also be considered in determining tenant eligibility.

C. Tenant Selection: The property owner or manager of the development shall market the BMP unit(s), and solicit rental applications. Applications from tenants selected by property owner or manager will be forwarded to Town or designee for verification of income eligibility.

D. Management

1. BMP rental units shall be managed by the property owner or manager in the same manner as other units in the development.

2. Tenants of BMP rental units are eligible to receive conciliation and mediation services provided through the Town's Rental Dispute Resolution Program except as they regard rent increases.
- E. Unit Rents: Rents may not exceed 80% of the most current Fair Market Rents as determined by the Santa Clara County Housing Authority.
- F. Annual Review: If a tenant's income increases so that it falls between 80 and 100 percent of MFI, then the rent may be increased in accordance with the Town's Rental Dispute Ordinance; and the unit shall still be considered a BMP Rental Unit. However, if a tenant's income exceeds 100 percent of MFI, the rent may be increased to the average rent of similar units in the complex; in this latter case, the unit will no longer be a BMP unit and the next available unit that is comparable in size shall be designated as a BMP unit in its place, and must be rented to an eligible household so that the number of BMP units within the project remains the same.
- G. Deed Restrictions: Council approved Deed Restrictions shall be recorded for each Below Market Price rental dwelling unit.

#### V1. RENTAL UNITS - NEW SECOND DWELLING UNITS

- A. Administration: The program shall be administered by the Town or its designee.
- B. Second Unit Incentive Program: 29.10.310 of the Town Code, may choose to participate in the Second Unit Incentive Program (SUIP) as referenced in Section 29.10.320(a) of the Town Code and as set forth below.
  1. The SUIP consists of a no interest construction loan to a property owner who intends to develop a new second unit. The loan amount shall be determined based on the square foot construction cost as set forth in the current version Uniform Building Code as adopted by the Town for new construction and remodels. The loan amount will be calculated at 100% of the construction cost if the unit is income and rent restricted to serve households with incomes below 50% of the Median Family Income (MFI), adjusted for household size, as defined by the United States Department of Housing and Urban Development (HUD) for the San Jose, CA Primary Metropolitan Statistical Area (PMSA), or 80% of the construction cost if the unit is income and rent restricted to serve households with incomes below 80% of MFI.
  2. When a property owner participates in the SUIP, a deed restriction shall be recorded on the property. The deed restriction shall stipulate the rental rate, tenant income level, duration of affordability and loan repayment requirement as well as any other criteria as determined appropriate by the Town.

3. A SUIP loan to construct a second unit within the Central Los Gatos Redevelopment Project area shall be funded using Redevelopment Affordable Housing Funds and shall remain affordable for 55 years. A SUIP loan to construct a second unit outside the Central Los Gatos Redevelopment Project area shall be funded using BMP Program Funds and shall remain affordable for 30 years. The SUIP affordability restrictions as set forth in this section may only be amended by action of the Town Council.
4. A tenant's ability to pay monthly rent will also be considered in determining tenant eligibility. Applications from tenants selected by the property owner or manager will be forwarded to the Town or its agent for verification of income eligibility. Rental agreements shall be submitted to the Town or its agent to verify compliance with the provisions of this section. Tenants are eligible to receive conciliation and mediation services provided through the Town's Rental Dispute Resolution Program except as they regard rent increases.
5. Units targeted to households with incomes up to 80% of the Median Family Income (MFI) shall have rents restricted to 80% of Fair Market Rents as determined by the Santa Clara County Housing Authority. Units targeted to households with incomes up to 50% of CMI shall have rents restricted to 50% of Fair Market Rents as determined by the Santa Clara County Housing Authority. Tenant rents and incomes will be monitored annually.