



**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 08/12/2020

ITEM NO: 2

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DATE: August 5, 2020

TO: Planning Commission

FROM: Joel Paulson, Community Development Director

SUBJECT: Forward a Recommendation to the Town Council for Approval of Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program, Town Wide. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos

**RECOMMENDATION:**

Forward a recommendation to the Town Council for approval of amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding the Below Market Price (BMP) Program.

**CEQA:**

The project is Categorical Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that this project will have a significant effect on the environment.

**FINDINGS:**

- As required, pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, this project is Exempt, Section 15061(b)(3);
- The amendments to Chapter 29 of the Town Code are consistent with the General Plan; and
- The modifications to the BMP Housing Program and Guidelines are consistent with the General Plan.

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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BACKGROUND:

The Town first adopted BMP regulations in 1979 to provide the Town with a supply of affordable housing. The BMP regulations have been modified over the years since they were first adopted, with the most recent modifications to the regulations occurring in 2009.

The Town's BMP regulations have resulted in a current inventory of 55 for sale BMP units and 119 rental BMP units. The Town's administrator of the BMP Housing Program, Hello Housing, manages the daily operations of the program in partnership with the Town.

At the request of a previous Mayor, the discussion of BMP regulations was placed on the March 5, 2019 Town Council agenda. At the March 5, 2019 meeting, the Town Council discussed the matter and forwarded the item to the Policy Committee for review and recommendations.

On April 9, 2019, August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020, the Town Council Policy Committee considered potential amendments to the Town Code regarding BMP regulations and modifications to the BMP Housing Program Guidelines.

On January 28, 2020, the Policy Committee recommended staff bring forward amendments to Chapter 29 of the Town Code regarding BMP regulations and modifications to the BMP Housing Program Guidelines for consideration by the Planning Commission and the Town Council to increase the number of BMP units and decrease the opportunities to pay in-lieu fees, resulting in the construction of more on-site BMP units for development projects. Exhibit 2 contains the Town Council minutes for the March 5, 2019 meeting, and Exhibits 3 through 7 contain the Policy Committee minutes for the April 9, 2019, August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020 meetings.

DISCUSSION:

Division 6 of Chapter 29 of the Town Code contains the Town's BMP Program.

A. Existing Town Code

Existing Town Code Section 29.10.3015 discusses the application of the Ordinance on development projects that are subject to the BMP Program. Section 29.10.3015 currently states:

This division shall apply to all multiple-family dwelling projects, residential condominium projects, condominium conversions, and to all residential planned development projects (division 2 of article VIII of this chapter) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings. Projects in the R-I and HR zones are excepted from BMP participation. The exception does not apply if the

DISCUSSION (continued):

project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

Existing Town Code Section 29.10.3025 discusses the scope of projects that are subject to the BMP Program. Section 29.10.3025 currently states:

The Below Market Price 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.

Planned development with an underlying zone of HR shall only be required to pay an in-lieu fee as established by a separate resolution.

The residential developments consisting of five (5) or more units are required to provide the following number of BMP units:

1. Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units.
2. Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:  
Number of BMP units = .225 (total # of market rate units) - 2.5
3. All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units.
4. Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number.
5. 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. 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

DISCUSSION (continued):

applies if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.

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 the phasing requirements during the project approval process.

B. Proposed Amendments

Based on the direction provided by the Policy Committee, staff has prepared a Draft Ordinance implementing the amendments (Exhibit 8), for the Planning Commission's consideration. The potential amendments, shown in ~~strike through~~ and underline font in Exhibit 8, would make the following substantive changes:

1. Remove projects in the R-1 and HR zones from being exempt from BMP participation; and
2. Remove planned development projects with an underlying zone of HR from only being required to pay an in-lieu fee.

C. Existing Below Market Price Housing Program Guidelines

The BMP Housing Program and Guidelines were adopted to provide the Town of Los Gatos with a supply of affordable housing. The BMP Housing Program and Guidelines detail the BMP housing requirements for residential developments, including the processes for purchasing a for sale BMP unit and renting a rental BMP unit.

D. Proposed Modifications

Based on the direction provided by the Policy Committee, staff has prepared modifications to the BMP Housing Program and Guidelines (Exhibit 9), for the Planning Commission's consideration. The potential modifications, shown in ~~strike through~~ and underline font in Exhibit 9, with additional modifications proposed by Hello Housing shown in red ~~strike through~~ and underline font, would make the following substantive changes:

1. Remove reference to the Los Gatos Redevelopment Agency or Community Benefit requirements;
2. Remove projects in the R-1 and HR zones from being exempt from BMP participation;

DISCUSSION (continued):

3. Remove planned development projects with an underlying zone of HR from only being required to pay an in-lieu fee;
4. Modify the language regarding the size of BMP units to allow for greater flexibility;
5. Modify the language regarding the parking requirements for BMP units to allow for a reduction in parking as determined by the deciding body;
6. Modify the Median Family Income (MFI) for owner occupied and rental units from 80 to 100 percent (current parameters), to 80 to 120 percent; and
7. Additional information and clarification for implementation of the BMP Program.

PUBLIC COMMENTS:

Public comments received by 11:00 a.m., Friday, August 7, 2020 are included as Exhibit 10.

CONCLUSION:

A. Recommendation

Based on the direction of the Town Council Policy Committee, staff recommends that the Planning Commission review the information included in the staff report and forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance and the modifications proposed to the BMP Housing Program and Guidelines. The Commission should also include any comments or recommended changes in taking the following actions:

1. Make the finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Exhibit 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Exhibit 1);
3. Make the required finding that the modifications to the BMP Housing Program and Guidelines are consistent with the General Plan (Exhibit 1);
4. Forward a recommendation to the Town Council for approval of the amendments to Chapter 29 of the Town Code in the Draft Ordinance (Exhibit 8); and
5. Forward a recommendation to the Town Council for approval of the proposed modifications to the BMP Housing Program and Guidelines (Exhibit 9).

CONCLUSION (continued):

B. Alternatives

Alternatively, the Commission can:

1. Forward a recommendation to the Town Council for approval of the Draft Ordinance and proposed modifications to the BMP Housing Program and Guidelines with modifications; or
2. Forward a recommendation to the Town Council for denial of the Draft Ordinance and proposed modifications to the BMP Housing Program and Guidelines; or
3. Continue the matter to a date certain with specific direction.

EXHIBITS:

1. Required Findings
2. Town Council Minutes, March 5, 2019
3. Town Council Policy Committee Minutes, April 9, 2019
4. Town Council Policy Committee Minutes, August 27, 2019
5. Town Council Policy Committee Minutes, September 24, 2019
6. Town Council Policy Committee Minutes, November 25, 2019
7. Town Council Policy Committee Minutes, January 28, 2020
8. Draft Ordinance
9. Draft Modifications to the BMP Housing Program and Guidelines
10. Public comments received by 11:00 a.m., Friday, August 7, 2020

**PLANNING COMMISSION – August 12, 2020**  
**REQUIRED FINDINGS FOR:**

**Town Code Amendment Application A-20-004**

Consider amendments to Chapter 29 of the Town Code regarding the Below Market Price Program and proposed modifications to the Below Market Price Housing Program and Guidelines.

**FINDINGS**

**Required Findings for CEQA:**

- It has been determined that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act, Section 15061 (b)(3).

**Required Findings for General Plan:**

- The proposed amendments to Chapter 29 of the Town Code are consistent with the General Plan.
- The proposed modifications to the BMP Housing Program and Guidelines are consistent with the General Plan.

EXHIBIT 1

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**MINUTES OF THE TOWN COUNCIL MEETING  
MARCH 5, 2019**

The Town Council of the Town of Los Gatos conducted a Regular Meeting on Tuesday, March 5, 2019, at 7:00 p.m.

**MEETING CALLED TO ORDER AT 7:04 P.M.**

**ROLL CALL**

Present: Mayor Steven Leonardis, Vice Mayor Marcia Jensen, Council Member Rob Rennie, Council Member Marico Sayoc, Council Member Barbara Spector.

Absent: None

**PLEDGE OF ALLEGIANCE**

John Lochner led the Pledge of Allegiance. The audience was invited to participate.

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)**

1. Approve Council minutes of February 19, 2019.
2. Authorize the Town Manager to negotiate and execute an agreement with the City of Campbell for the pavement resurfacing and cost sharing of dual jurisdiction street sections in a form acceptable to the Town Attorney.
3. Authorize the Town Manager to execute a grant agreement with the Los Gatos Chamber of Commerce for partial funding in the amount of \$22,000 for a consultant to assist with the formation of a Los Gatos Property Business Improvement District (PBID).

**MOTION:**      **Motion by Vice Mayor Jensen to approve the Consent Items. Seconded by Council Member Rennie.**

**VOTE:**        **Motion passed unanimously.**

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

4. Provide direction on potential amendments to the Town's Below Market Price (BMP) regulations.

Joel Paulson, Community Development Director, presented the staff report.

Other Business Item #4 – continued

Opened and closed Public Comment.

Council discussed the matter.

**MOTION:**     **Motion** by **Mayor Leonardis** to forward the item to the Policy Committee for review with the ideas provided by the Town Council and best practices of other communities and return to Council with recommendations. **Seconded** by **Vice Mayor Jensen**.

**VOTE:**        **Motion passed unanimously.**

5. Provide direction regarding potential Town Council Member term limits.

Laurel Prevetti, Town Manager, presented the staff report.

Opened Public Comment.

John Shepardson

- Commented on the issue.

Closed Public Comment.

Council discussed the matter.

**MOTION:**     **Motion** by **Vice Mayor Jensen** to table the issue. **Seconded** by **Council Member Rennie**.

**VOTE:**        **Motion passed 4/1. Council Member Sayoc voting no.**

#### **PUBLIC HEARINGS**

6. Town Code Amendment Application A-18-002. Project Location: Townwide. Applicant: Town of Los Gatos.

Consider amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding shared parking.

Azhar Khan, Assistant Planner, presented the staff report.

Opened and closed Public Comment.

Public Hearing Item #6 – continued

Council discussed the matter.

**MOTION:**      **Motion by Vice Mayor Jensen** to introduce an Ordinance (Attachment 4), by title only, effecting amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding shared parking. **Seconded by Council Member Sayoc.**

**VOTE:**          **Motion passed unanimously.**

The Town Clerk read the title of the ordinance.

**OTHER BUSINESS**

7. Adopt two resolutions related to business streamlining opportunities that reduce the timeline and cost of specific Town processes:
  - a. A resolution suspending Ordinance 2021 and modifying the assignment of duties for new conditional use permits for restaurants to the Development Review Committee until December 31, 2019; **RESOLUTION 2019-008** and
  - b. Adopt a resolution modifying the assignment of duties for minor exterior alterations on commercial buildings to be processed with a building permit until December 31, 2019. **RESOLUTION 2019-009**

Monica Renn, Economic Vitality Manager, presented the staff report.

Opened Public Comment.

John Shepardson

- Commented in support of the modifications.

Closed Public Comment.

Council discussed the matter.

**MOTION:**      **Motion by Vice Mayor Jensen** to adopt the staff recommendation contained in the staff report. **Seconded by Council Member Sayoc.**

**VOTE:**          **Motion passed 4/1. Council Member Rennie voting no.**

## **COUNCIL/TOWN MANAGER REPORTS**

### **Council Matters**

- Council Member Sayoc stated she performed a ribbon cutting for EQ1 Real Estate, she attended the Regional Economic Forum with Mayor Leonardis, and she attended the Police Foundation Ball.
- Council Member Spector stated she attended the Council Policy Committee meeting and the business brokers breakfast hosted by the Town.
- Mayor Leonardis stated he attended the West Valley Mayors and Managers meeting, Senator Beall's Emergency Preparedness Pancake Breakfast, the Regional Economic Forum with Council Member Sayoc, the business brokers breakfast with all Council Members, and performed a ribbon cutting for Boulevard Bites and Brews.
- Vice Mayor Jensen stated she attended the Council Policy Committee meeting, the business brokers breakfast, and performed a ribbon cutting for Lululemon.
- Council Member Rennie stated he performed a ribbon cutting for Jewelry Sky Diamond and attended the Boulevard Bites and Brews ribbon cutting, he attended the Valley Transportation Authority (VTA) Board Workshop, the VTA Congestion Management Subcommittee meeting, the VTA Capital Projects Oversight Committee meeting, the Silicon Valley Clean Energy Authority (SVCEA) Workshop, and the business brokers breakfast.

### **Manager Matters**

- Announced Adult Commissioner mid-year recruitment has begun, applications are due April 5, 2019, 4:00 p.m.
- Announced the annual Youth Commissioner recruitment has also begun and applications are due May 3, 2019, 4:00 p.m.

### **ADJOURNMENT**

The meeting adjourned at 8:15 p.m.

Attest:

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/s/ Shelley Neis, Town Clerk



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**MINUTES OF THE SPECIAL TOWN COUNCIL POLICY COMMITTEE MEETING  
APRIL 9, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a special meeting on Tuesday, April 9, at 5:00 p.m.

**MEETING CALLED TO ORDER**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Rob Schultz, Town Attorney; Joel Paulson, Community Development Director; Laurel Prevetti, Town Manager; Arn Andrews, Assistant Town Manager.

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

1. Approval of the February 26, 2019 Council Policy Committee Minutes.

Approved.

2. Provide direction on potential demolition regulation modifications.

Joel Paulson, Community Development Director, presented the staff report.

Bess Weirsema, Studio 3

- Reported that the professional design community is in full support of the staff recommended changes. Suggested that some additional definition of what counts towards the 50% exterior wall calculation would be helpful. Supported the in-kind replacement standard if it enhances the structural integrity of the building and aligns better with existing building standards.

After discussion, the Committee directed staff to forward the recommended Town Code Amendments for the demolition regulation modifications (Attachment 2 of the staff report) to the Planning Commission for review. In addition, review by the Historic Preservation Committee is preferable if scheduling permits.

3. Provide direction on potential amendments to the Town's Below Market Price regulations.

Joel Paulson, Community Development Director, presented the staff report.

Natalie Ladd, BMP owner

- Disagreed with items 1, 2, and 5 from Attachment 5. Suggested that other communities have ownership programs and market rate resale options.

After discussion, the Committee asked staff to review elements of BMP regulations in other communities, review the Town's prior housing affordability plan, explore residential linkage fees, and provide options for amending the Town's BMP regulations including: potential lowering of threshold for requiring BMP units, greater flexibility in unit size and types, a potential plan for use of the Town's accumulated and future BMP in-lieu fees.

4. Provide direction on potential amendments to the Town Agenda Format and Rules Policy regarding time limits for applicant and appellant presentations and rebuttals.

Laurel Prevetti, Town Manager, presented the staff report.

After discussion, the Committee unanimously approved a motion to modify the Town Agenda Format and Rules Policy regarding Public Hearings. The section should be modified to reflect that when there is an appeal, the appellant shall be provided an initial ten (10) minutes and subsequent five (5) minute rebuttal. All other speakers shall be provided three (3) minutes. The Town Attorney expressed concerns about the modification and the Committee asked that he provide case law when the item goes to Council.

## **ADJOURNMENT**

The meeting adjourned at 6:10 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the April 9, 2019 meeting as approved by the Council Policy Committee.

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/s/ Arn Andrews, Assistant Town Manager



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**Minutes of the Regular Town Council Policy Committee Meeting  
August 27, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, August 27, 2019, at 5:00 p.m.

**MEETING CALLED TO ORDER AT 5:00 P.M.**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Arn Andrews, Assistant Town Manager; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Shelley Neis, Clerk Administrator; Michelle Radcliffe, Deputy Clerk; Jocelyn Shoopman, Associate Planner; Holly Zappala, Management Analyst.

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

**1. Approval of the July 23, 2019 Council Policy Committee Minutes.**

Approved with one modification.

**2. Review and Provide Direction on Proposed Modifications to the Commission Appointment Policy.**

Shelley Neis, Clerk Administrator, presented the staff report.

After discussion, the Committee agreed to forward a recommendation to the Town Council to amend the Commission Appointment Policy to allow applicants to apply for more than one Commission at a time.

**3. Discuss and Provide Direction on the Land Use Appeal Process.**

After continuing its discussion from prior meetings, the Committee asked staff to return to with revised language reflecting the following two options for the land use appeal process:

- The Town Council may consider additional findings/information as part of the land use decision appeal; and
- The appeal is returned to the Planning Commission if the Town Council grants the appeal based on information not presented to the Planning Commission.

The Committee asked that the revised language be simple, easy to understand, and clear about the Council's full discretion to decide the matter.

The Committee also requested that staff create a brochure to provide to appellants with information about filing an appeal, including frequently asked questions, deadlines, and options for withdrawal and refunds.

The Committee remained in agreement that the land use appellant has the responsibility ("burden of proof") of providing information to support a finding and not the Town Council.

**4. Provide Direction on Potential Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding Below Market Price Regulations and Options for the Use of Below Market Price In-Lieu Fees.**

Jocelyn Shoopman, Associate Planner, presented the staff report.

After discussion, the Committee asked staff to return to the Committee with options for potential uses of the existing Below Market Price (BMP) in-lieu fees, and alternatives to modify the BMP program consistent with the goals of increasing the number of BMPs in the Town, decreasing the number of in-lieu fees collected, and keeping BMPs on-site when possible.

**ADJOURNMENT**

The meeting adjourned at 6:15 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the August 27, 2019 meeting as approved by the Town Council Policy Committee.

/s/Holly Zappala, Management Analyst



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**Minutes of the Regular Town Council Policy Committee Meeting  
September 24, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, September 24, 2019, at 5:00 p.m.

**MEETING CALLED TO ORDER AT 5:00 P.M.**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Lisa Petersen, Town Engineer; Holly Zappala, Management Analyst.

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

**1. Approval of the August 27, 2019 Council Policy Committee Minutes.**

Approved.

**2. Discuss and Provide Direction on the Land Use Appeal Process.**

After continuing the discussion from prior meetings, the Committee asked staff to send the Committee via email revised language reflecting the following two options for the land use appeal process:

- The Town Council may consider additional findings/information as part of the land use decision appeal; and
- The appeal is returned to the Planning Commission if the Town Council grants the appeal based on information not presented to the Planning Commission.

Upon approval of the emailed language, the Committee agreed to forward both options to the Town Council for discussion and decision.

**3. Provide Direction on Potential Amendments to the Town Code Regarding Right of Way Dedication, Installation of Curbs, Gutters and Sidewalks, and Undergrounding of Utilities.**

After discussion, the Committee agreed to forward a recommendation to adopt the proposed amendments to the Town Council with modifications to the language.

**4. Provide direction on potential amendments to Chapter 29 (Zoning Regulations) of the Town Code regarding below market price regulations and options for the use of below market price in-lieu fees.**

After discussion, the Committee asked staff to send the Committee via email revised language reflecting a goal of below market price units seamlessly integrating into the rest of the development. Upon approval of the emailed language, the Committee agreed to forward a recommendation to adopt the proposed amendment to the Town Council.

**5. Discuss and Provide Direction on a Planning Grants Program Application.**

Sally Zarnowitz, Planning Manager, presented the staff report.

After discussion, the Committee agreed to forward a recommendation to the Town Council to apply for the Planning Grants Program for implementation of qualifying action items in the current Housing Element of the General Plan. The Committee asked staff to include those items as an attachment to the Town Council report.

**ADJOURNMENT**

The meeting adjourned at 6:18 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the September 24, 2019 meeting as approved by the Town Council Policy Committee.

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/s/Holly Zappala, Management Analyst



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**Minutes of the Special Town Council Policy Committee Meeting  
November 25, 2019**

The Town Council Policy Committee of the Town of Los Gatos conducted a special meeting on Monday, November 25, 2019, at 4:00 p.m.

**MEETING CALLED TO ORDER AT 4:00 P.M.**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Holly Zappala, Management Analyst.

**CONSENT ITEMS**

1. Approve the Draft Minutes of October 22, 2019.

Approved.

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

Mayor Jensen requested Item 3 be reviewed first.

3. **Discuss and Provide Direction on Potential Outdoor Lighting Regulation Modifications.**

Joel Paulson, Community Development Director, presented the staff report.

After discussion, the Committee asked staff to return to the Committee with revised proposed lighting regulations, similar to the City of Campbell's Lighting Design Standards, including the following considerations:

- Regulate lighting by zone or district
- Distinguish between permanent and temporary lighting
- Eliminate vague language

- Update terminology to include modern types of signs and eliminate obsolete references
- Maintain Hillside restrictions and adjust language to ensure enforceability
- Reduce restrictions on commercial signage
- Allow projected wall art as part of a Special Event Permit
- Consider allowing string lighting on private property on a permanent basis

**2. Provide Direction on Potential Modifications to the Below Market Price Housing Program Regulations.**

Joel Paulson, Community Development Director, presented the staff report.

Sarah Chaffin

-Commented that the Town's Below Market Price Housing Guidelines should allow eligibility for households who earn up to 120% or 150% of the Area Median Income (AMI) to accommodate people in households unable to afford housing in Los Gatos at market rate, but with incomes too high to qualify at the current 80% AMI eligibility limit (the "missing middle").

After discussion, the Committee asked staff to return to the Committee with revised proposed Below Market Price Housing Program Guidelines, including increasing the eligibility limit to 120% AMI, adjusting the requirements for purchases and rentals to correspond with each other, and making other revisions as identified by Committee members.

**ADJOURNMENT**

The meeting adjourned at 5:04 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the November 25, 2019 meeting as approved by the Town Council Policy Committee.

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/s/ Holly Zappala, Management Analyst



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**DRAFT  
Minutes of the Town Council Policy Committee Regular Meeting  
January 28, 2020**

The Town Council Policy Committee of the Town of Los Gatos conducted a regular meeting on Tuesday, January 28, 2020, at 5:00 p.m.

**MEETING CALLED TO ORDER AT 5:00 P.M.**

**ROLL CALL**

Members Present: Marcia Jensen, Barbara Spector.

Staff Present: Laurel Prevetti, Town Manager; Robert Schultz, Town Attorney; Joel Paulson, Community Development Director; Sally Zarnowitz, Planning Manager; Monica Renn, Economic Vitality Manager; Jennifer Armer, Senior Planner; Holly Zappala, Management Analyst.

**CONSENT ITEMS (TO BE ACTED UPON BY A SINGLE MOTION)**

- 1. Approve the Draft Minutes of December 10, 2019.**
- 2. Approve the Town Council Policy Committee Meeting Schedule for 2020.**

Approved.

**VERBAL COMMUNICATIONS**

None.

**OTHER BUSINESS**

- 3. Discuss and Provide Direction on Potential Modifications to the Below Market Price Housing Program Regulations.**

Joel Paulson, Community Development Director, presented the staff report.

After discussion, the Committee asked staff to return to the Committee with revised proposed Town Code amendments and Below Market Price Housing (BMP) Guidelines, including increasing the household income requirement for BMP ownership to 120% of the Median Family Income to match the BMP rental requirement. The Committee requested clarification on questions regarding requiring BMPs in continuum care facilities and

assigning preferences to applicants. The Committee agreed that the Town should modify the Code and BMP Guidelines, while the Town's BMP housing provider, currently Hello Housing, may contribute an administrative appendix to the Guidelines.

**4. Discuss and Provide Direction on Potential Outdoor Lighting Regulation Modifications.**

Jennifer Armer, Senior Planner, was present to address questions.

After discussion, the Committee asked staff to send the Committee via email revised language, including consistent wording in the proposed Ordinance and the Residential Design Guidelines, and removal of the distinction of "holiday" or "patio" lights. Upon approval of the emailed language, the Committee agreed to forward a recommendation to the Planning Commission to approve the proposed modifications.

**5. Discuss the Town's Interpretation of "Used Vehicles" in the Town Code and Determine if an Exemption for Indoor Showrooms is Appropriate.**

Monica Renn, Economic Vitality Manager, presented the staff report.

Rodney Butterfield

-Commented that his company sells used cars, and they are high-end, restored vintage and sports racing cars. His customer base is collectors. He said that his showrooms look more like an antique art gallery as opposed to a used car lot.

John Eichinger

-Commented that he believes the addition of Mr. Butterfield's business would be an enhancement to downtown Los Gatos.

After discussion, the Committee agreed to forward a recommendation to the Planning Commission to amend Town Code Section 29.20.185, Table of Conditional Uses Section 7 to eliminate the word "new" from section (a) and entirely eliminate section (b) requiring used vehicle sales and rentals to be incidental to new vehicle sales.

**6. Identify Future Work Plan Items for the Council Policy Committee.**

Holly Zappala, Management Analyst, presented the staff report.

David Weissman

-Commented that the Town should revise its defensible space requirements in conjunction with the Hillside Development Standards and Guidelines Visibility Analysis as the two are tied together in practice.

PAGE 3 OF 3

SUBJECT: Draft Minutes of the Regular Town Council Policy Committee Meeting of January 28, 2020

DATE: February 25, 2020

After discussion, the Committee agreed that the potential items for 2020 recommended by staff be added to the work plan for the Policy Committee in 2020 and each item be examined as it aligns with the Town's Strategic Priorities.

### **ADJOURNMENT**

The meeting adjourned at 6:07 p.m.

This is to certify that the foregoing is a true and correct copy of the minutes of the January 28, 2020 meeting as approved by the Town Council Policy Committee.

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Holly Zappala, Management Analyst

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## DIVISION 6. - HOUSING ASSISTANCE PROGRAM

### Sec. 29.10.3000. - Intent.

This division is adopted to meet housing needs shown in the housing element of the general plan.

(Ord. No. 2181, § III, 10-19-09)

### Sec. 29.10.3005. - Below market price program—E established.

This division establishes the below market price program (BMP).

(Ord. No. 2181, § III, 10-19-09)

### Sec. 29.10.3010. - ~~Same Program~~ —I intent.

The below market price (BMP) program requires the provision of dwellings that persons and families of moderate and low income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate income.

(Ord. No. 2181, § III, 10-19-09)

### Sec. 29.10.3015. - Application.

This division shall apply to all residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and to all residential planned development projects (~~a Division 2 of a Article VIII of this chapter~~) either approved after July 4, 1979, or whose approval includes a condition requiring the provision of BMP dwellings. ~~Projects in the R-I and HR zones are excepted from BMP participation. The exception does not apply if the project is built under the rules of an overlay zone unless the rules of the overlay zone provide otherwise.~~

(Ord. No. 2181, § III, 10-19-09)

### Sec. 29.10.3020. - Definitions.

For the purposes of this division the following definitions shall apply:

*BMP dwelling* means any residential dwelling unit designated for very low, low, and moderate income persons and families under the rules of this section.

*Person of moderate income* means one whose income falls within the range specified by the Town Council in the resolution authorized by section 29.10.3040.

(Ord. No. 2181, § III, 10-19-09)

### Sec. 29.10.3025. - Scope.

The Below Market Price Program requirements shall apply to all residential development projects, mixed-use projects, multiple-family dwelling projects, residential condominium

projects, condominium conversions, and residential planned 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;~~ and
4. Conversion of non-residential use to residential use.

~~Planned development with an underlying zone of HR shall only be required to pay an in-lieu fee as established by a separate resolution.~~

The residential projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects ~~developments consisting of five~~ that include (5) or more residential units are required to provide the following number of BMP units:

1. Projects containing five (5) or more but less than twenty (20) market rate units must provide a number of BMP units equal to ten (10) percent of the number of market rate units;
2. Projects with from twenty (20) to one hundred (100) market rate units must provide BMP units as determined by the following formula:  
$$\text{Number of BMP units} = .225 (\text{total \# of market rate units}) - 2.5;$$
3. All projects in excess of one hundred (100) market rate units must provide a number of BMP units equal to twenty (20) percent of the market rate units;
4. Whenever the calculations of BMP units result in a fraction of one-half or more, the number of units to be reserved is increased to the next whole number; and
5. The Town, in limited circumstances, at its sole discretion, may consider an in-lieu payment alternative to the required BMP unit for a project with an underlying zone of HR. ~~in the case of Planned Unit development with an underlying zone of HR.~~ 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.

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 the phasing requirements during the project approval process.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3030. - Price.

The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows:

1. The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council.
2. The initial price does not include the cost of land, profit, or marketing costs.
3. Each BMP unit will be subjected to recorded title restrictions concerning manner of fixture sales, occupancy and leasing.
4. Each buyer of a BMP unit must agree to sell the unit to a moderate income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit.
5. The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council.
6. If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5).
7. The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3035. - Project denial.

If an applicant for zoning approval declines to provide BMP units required by ordinance, the zoning approval shall be denied.

(Ord. No. 2181, § III, 10-19-09)

Sec. 29.10.3040. - Administration.

The Council shall adopt by resolution regulations concerning all aspects of the BMP program, including the elements of location of the units, price, buyer eligibility standards, rent, the length of the period during which a unit will be subject to BMP restrictions, the form of recorded instruments and any other matter consistent with the provisions of this section.

(Ord. No. 2181, § III, 10-19-09)

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## Exhibit A

### 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~~ moderate 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~~ BMP is governed by Division 6 of Article VIII of Chapter 29 of the Town Code. The BMP Program is administered under these ~~Below Market Price Program~~ BMP Housing Program Guidelines.

#### II. Below Market Price Housing Requirements – General

- A. Applicability: The BMP Program requirements shall apply to all residential ~~development~~ projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned 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; and; ~~or~~
  4. Conversion of non-residential use to residential use.

EXHIBIT 9

B. Number of BMP Units: All residential ~~developments~~ projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and all residential planned development projects ~~consisting of that include~~ five (5) or more residential units or parcels 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 ten percent (10%) to twenty percent (20%) over the range of 20 to 100 market rate units; and

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

BMP dwellings within a project of rental units ~~shall~~ should also be rental units. BMP units within a project of owner-occupied units ~~shall~~ should 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, in limited circumstances, at its sole discretion, may consider an in-lieu payment alternative to the required BMP for a project with an underlying zone of HR unit in the case of Planned Unit development with an underlying zone of HR or a residential ~~developments~~ project, mixed-use project, multiple-family dwelling project, residential condominium project, condominium conversions, and all

residential planned development projects with five (5) to nine (9) units with an underlying zone of HR. 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; or (2) developed 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 an fee in-lieu fee 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 Projects~~ Projects: 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~~ Projects: ~~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~~ Projects: 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; and 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, in limited circumstances, at its sole discretion, may consider off-site construction of BMP units for continuum care

facilities and for ~~Hillside Residential (HR) Zone District~~ and residential ~~developments~~ projects, mixed-use projects, multiple-family dwelling projects, residential condominium projects, condominium conversions, and residential planned development projects with five (5) to nine (9) units with an underlying zone of HR 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~~ should to the extent possible, reasonably be 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~~ should to the extent possible, not be a significant identifiable difference between the BMP and market-rate units visible from the exterior. The size and design of the BMP units ~~must~~ should to the extent possible, be ~~reasonably~~ consistent with the market-rate units in the development. The goal of the BMP Program is for a seamless integration of the BMP units with the market-rate units in a 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, unless the deciding body approves a reduction in parking for the BMP units.

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 one hundred and twenty percent (100-120%) 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 income will be determined in accordance with the guidelines provided in Appendix A of this document. Eligible income includes, but is not limited to the following:

1. Payment from employer;
2. Payment from self-employment (e.g.: Lyft, Uber, DoorDash, etc.);
3. Spousal support;
4. Social Security Income; and
5. Dividends or Annuities from retirement accounts.

Additional information may be requested for confirmation of the provided documents. Applicants must provide sufficient documentation of income, as outlined in the Program's application, to the Town for use in determining the applicant's income level. Final determination of an applicant's income level and Program eligibility shall be at the sole discretion of the Town and/or its designee.

- b. Household assets, such as real property, may also be considered in determining eligibility. Funds in excess of \$5,000 (excluding the amount to be contributed as the Buyer's downpayment and retirement investment accounts such as 401K and 457K accounts) will be included when determining household income. In such cases, annual income will include the greater of the actual income from household assets or a percentage of the value of household assets based upon the current passbook savings rate as established by

HUD. This income, if any, will be included as part of the household's total income.

c. 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 costs shall include the following factors:

1. ~~1.——u~~ Unit price;
2. ~~2.——e~~ Current lending rates;
3. ~~3.——e~~ Estimated property taxes;
4. ~~4.——e~~ Estimated homeowner's private mortgage insurance (PMI) costs;
5. ~~u~~ Utility assumption;
6. ~~——h~~ Homeowners' association fees, if applicable; and
7. ~~5.——o~~ Other expenses as determined necessary by the lender.

d. e. 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.~~ Qualifications must include:

1. The ability to pay taxes, insurance, closing costs, and any homeowner's association fees in addition to the mortgage;
2. All loans used to purchase or refinance BMP units must be fixed rate and fixed term, without balloon payments, to minimize homeowner's exposure to increased risks of mortgage default. The program reserves the right to identify additionally prohibited loan programs and/or characteristics; and
3. Co-signers are allowed.

e. d. Required Downpayment: A homebuyer shall have a minimum downpayment that is equivalent to at least ~~10~~ three percent (3%) of the BMP purchase price and is required to document the source of all downpayment funds. The minimum ~~10~~ three percent (3%) downpayment is exclusive of any other supplemental downpayment assistance grant or loan programs available from other agencies.

f. Purchase Contract: At the time a purchase contract is signed, the applicant must deposit a minimum of one percent (1%) of the purchase price.

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~~ one year 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. The definition of "single," when used in the context of "single heads of household," means only one parent is present in the home.;
- 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.;
- and
- 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.
  - i. Living in Los Gatos means: Occupying and renting, at the time of application, for at least two years prior to the application date, a bone fide rental dwelling unit within the incorporated Town limits, as evidenced by valid third-party documentation (e.g. current lease, CA driver's license or vehicle registration card, and/or utility bills showing applicant's name and street address in Los Gatos). For homeless applicants, evidence that the applicant's last permanent residence was located in Los Gatos and/or documentation from a case manager or homeless service provider may be used to document an applicant's current status in Los Gatos, which may include places or structures other than a bona fide dwelling unit (i.e. tent, vehicle, etc.)
- 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.
  - i. Working in Los Gatos means: A member of the household must work a minimum of 20 hours per week as a permanent employee at a business within the incorporated Town limits. Telecommuting or working from an address located in Los Gatos for an employer not located in the Town of Los Gatos as defined above, shall not qualify as employment in the Town, unless the employer is providing the workspace in the Town as part of its corporate/company offices.

- ii. For persons who are retired at the time of application, the applicant's work history immediately prior to the date of retirement shall be considered in determining the length of employment. The Town may require applicants to submit pay stubs, W-2 forms, tax returns, or other satisfactory evidence as proof of employment at a Town of Los Gatos business. Length of employment shall be calculated from the final date for submitting a Town Eligibility Preapplication.
- iii. Employment does not include volunteer work or any work without reportable income.

3. **Two points:**

- a. Households who have lived in the Town for at least 10 years and have moved out of the Town within the last ~~ten~~ 10 years prior to the time of application.
- b. Household size is worth two points per person.

4. **One point:**

- a. Households who live in Santa Clara County at time of the application.
  - i. Living within Santa Clara County means: Occupying and renting, at the time of application, for at least two years prior to the application date, a bone fide rental dwelling unit within the incorporated County of Santa Clara, as evidenced by valid third-party documentation (e.g. current lease, CA driver's license or vehicle registration card, and/or utility bills showing applicant's name and street address) in Santa Clara County. For homeless applicants, evidence that the applicant's last permanent residence was within the incorporated County of Santa Clara and/or documentation from a case manager or homeless service provider may be used to document an applicant's current status within the incorporated County of Santa Clara, which may include places or structures other than a bona fide dwelling unit (i.e. tent, vehicle, etc.)
  - b. Households who work within the incorporated County of Santa Clara County at time of the application.
    - i. Working within Santa Clara County means: A member of the household must work a minimum of 20 hours per week as a permanent employee at a business within the incorporated County of Santa Clara. Telecommuting or working from an address located in Santa Clara County for an employer not located in the County as defined above, shall not qualify as employment in Santa Clara



available units in the order of ~~point~~ ranking, from most points to least points. An applicant may refuse to purchase an available unit twice ~~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; or
    - 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~~ Moderate Income Households (those whose income is above eighty percent (80%), but no greater than one hundred and twenty percent (100 120%), of the ~~County Median Income MFI~~); and Low Income Households (those whose income is above fifty percent (50%), but no greater than eighty percent (80%), of the ~~County Median Income MFI~~).
1. Fifty percent (50%) of the units in a project should ~~shall~~ be priced to be affordable to ~~Median~~ Moderate Income Households; and fifty percent (50%) should ~~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~~ Moderate 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, upon a showing by the developer that the project provides a public benefit to the residents of the Town. ~~to fulfill a development's Community Benefit requirements.~~

The Affordable Sales Price ~~affordability level~~ of a unit shall be for the purpose of setting the initial selling price only and does 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 Affordable ~~unit's~~ Sales Price for each unit type (number of bedrooms), for each of the two income categories consistent with Health & Safety Code Section 50052.5, and assuming a three percent (3%) percent downpayment.

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~~ Moderate Income Households: the average of the one hundred and twenty percent (100 120%) MFI annual income and the eighty percent (80%) MFI annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

Example: ~~100 120 percent %~~ MFI (4-person/4 bedroom) = \$105,000

~~80 percent %~~ 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:

Unit Size	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 eighty percent (80%) MFI annual income and the fifty percent (50%) annual income (assuming household size appropriate to size of unit) x Multiplier = Initial Sales Price.

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

80 percent % 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~~ three percent (3%) downpayment = 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. Required Documents for Completing a Home Purchase:

The following documents must be read and signed by the Owner(s) before the sale or resale of a BMP unit is completed:

1. Promissory Note;
2. Performance Deed of Trust;
3. Deed Restriction, Refinance Restriction, and First Right of Refusal Agreement.  
Council approved Deed Restrictions shall be recorded with each Below Market Price dwelling unit in order to preserve indefinitely the affordability of the unit for persons of low and ~~median~~ moderate income; and
4. Request for Notice Under Section 2924 (b) of California Civil Code, 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~~ BMP 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)-; and
5. The homeowner is responsible for paying all costs related to a pest inspection prior to the sale of the property, as well as the cost to cure any deficiencies noted as "Section 1" in the inspection report prior to the close of escrow.

F. General Requirements:

1. 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 ~~their~~ ~~his or her~~ primary residence during ~~their~~ ~~his or her~~ ownership of said unit. Annual compliance monitoring will be performed to confirm proof of owner occupancy. The owner shall cooperate with the Town and provide required certifications and any reasonable requests for supporting documentation to confirm compliance within fifteen (15) days of receipt of a written request by the Town. The Town or its designee has the right to review occupancy on a case-by-case basis. If the Town determines that an owner has intentionally made false statements or misrepresented any facts on the annual certification, or if an owner fails to submit the Certification of Owner Occupancy, the Town will treat this as a breach of the Deed Restrictions and will take all legal remedies available.

2. Capital Improvements: Consistent with the deed restriction, BMP homeowners will have the opportunity to increase their resale price to reflect pre-approved documented costs associated with capital improvements. To maintain the affordability for future BMP owners, the Town will cap all eligible capital improvements at ten percent (10%) of the resale price.
3. Title Transfer Restrictions: Any transfer without satisfaction of the provisions of the Deed Restrictions is prohibited.

#### 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~~ one hundred and twenty percent (120%) 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 income will be determined in accordance with the guidelines provided in Appendix A of this document. Eligible income includes, but is not limited to the following:
  - a. Payment from an employer;
  - b. Payment from self-employment (e.g.: Lyft, Uber, DoorDash, etc.);
  - c. Spousal support;
  - d. Social Security Income; and
  - e. Dividends or Annuities from retirement accounts.

Additional information may be requested for confirmation of provided documents.

2. Priority will be given to those households whose income is less than fifty percent (50%) of the MFI.
3. ~~Household assets may also be considered in determining eligibility.~~ Household Assets: For households applying to be a tenant of a BMP unit, the maximum asset

limit is equal to the maximum household income adjusted for household size that is allowable in order to be eligible for the program. The maximum allowable household income limits for the BMP rental program are published annually. Assets are calculated based on account balances at the time of application.

4. 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 the property owner or manager will be forwarded to Town or its designee for verification of income eligibility.

D. Annual Re-Certification of Income: At least once a year, the Town or its designee shall requalify BMP tenants to verify that they are eligible to remain in BMP rental units.

- a. The Town or its designee will provide the "BMP Renter Occupancy Certification Form" to all BMP tenants who have lived in a BMP unit for at least one year. If the BMP renter fails to submit a signed Occupancy Certification Form within thirty (30) days of the written request, then the lease shall automatically terminate, and the rent will increase to market rate, as determined by the apartment owner/property manager, within sixty (60) days of written notice from the apartment owner/property manager.
- b. On an annual basis, re-certification shall be based upon the BMP tenant's household income as determined by:
  - i. Copies of payroll stubs or other verification of employment for the last two consecutive months;
  - ii. Prior year tax returns;
  - iii. Bank statements for the last two consecutive months;
  - iv. Household size; and
  - v. Town or its designee will accept signed affidavits in lieu of the following documentation:
    - a. No Financial Accounts under the tenant(s) name; and
    - b. No Income under the tenant(s) name.

E. Management:

1. BMP rental units shall be ~~managed~~ maintained and managed by the property owner or manager in the same manner as other units in the development.
2. An affordable BMP unit may not be leased until the Town has approved the unit for occupancy.
3. Tenants of BMP rental units are eligible to receive conciliation and mediation services provided through the Town's Rental Dispute Resolution Program, when there is no concurrent issue concerning increase in or the amount of rent except as they regard rent increases.
4. All BMP units must be rented to BMP tenants approved by the Town or its

- designee.
5. An apartment owner/property manager shall notify the Town or its designee of any available BMP units and the Town or its designee shall have fourteen (14) days to provide apartment owner/property manager with an income eligible candidate(s). In reviewing each candidate, the apartment owner/property manager may apply the same tenant selection criteria, such as past performance in meeting financial obligations and credit references, as those applied to applicants for non-BMP units on the property, except for those standards relating to income eligibility and minimum income requirements.
  6. Executed Lease Agreement and BMP Addendum: The apartment owner/property manager will provide the Town or its designee with a copy of the executed lease agreement and BMP Addendum within five (5) business days of execution.
  7. Terms of Lease Agreement:
    - i. BMP tenants will be subject to the same conditions of tenancy as other tenants occupying the subject property, except for terms relating to occupancy, income eligibility, annual recertification, and limits on rents; and
    - ii. Each BMP unit shall be leased under a form of tenant lease approved by the Town or its designee. The tenant lease and BMP addendum shall, among other matters:
      - a. Provide for termination of the lease for failure: (1) to provide any information required under the Regulatory Agreement or reasonably requested by the apartment owner/property manager to establish or recertify the tenant's qualification, or the qualification of the tenant's household, for occupancy of the BMP unit; or (2) to income qualify as a result of any material misrepresentation made by such tenant with respect to the income computation or certification;
      - b. Be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the apartment owner/property manager and the tenant; however, the rent may not be raised more often than once every twelve (12) months after such initial year. The apartment owner/property manager will provide each tenant with at least sixty (60) days' written notice of any increase in rent applicable to such tenant;
      - c. Prohibit subleasing of the BMP unit or any portion of the BMP unit, contain nondiscrimination provisions, and include the tenant's obligation to inform the property manager of any need for maintenance or repair;
      - d. Allow termination of the tenancy only for an increase in tenant's household income above qualifying income or for good cause, including violation of the terms and conditions of the tenant lease, violations of house rules, non-payment of rent, violations of applicable federal, state, or local law, or other good cause;
      - e. Include, at the apartment owner's option, the obligation for the tenant to provide a security deposit not exceeding two (2) months' rent; and
      - f. Otherwise conform to BMP Guidelines.
  8. Occupancy Requirements: The apartment owner/property manager shall notify the Town or its designee if it suspects that there have been any changes to the

occupancy of the BMP unit. If the tenant fails to receive approval from the Town for any changes in occupancy, or subleases the property, or fails to provide the annual occupancy recertification, the tenant shall be in violation of its lease and will no longer qualify as a BMP tenant.

9. Waiting List Management:

- a. Waiting List: Anyone who wishes to be admitted to the property or to be placed on the property's Waiting List must complete an application. The application must include a signature certifying the accuracy and completeness of information provided. If the applicant is placed on the property's Waiting List, the List will note the name of the applicant, the date and time of application, the size of unit desired, and any other pertinent information;
- b. Accommodating Persons with Disabilities: The property shall accommodate persons with disabilities who cannot utilize the property's preferred application process, by providing alternative methods of application in-take (e.g. accepting mailed or online applications). In addition, the public notification of any closing or opening of the property's Waiting List shall comply with HUD fair housing requirements, such as adopting suitable means to assure that notices reach eligible individuals with disabilities and those with limited English proficiency. The property also ensures that notices of and communications will be provided in a manner that is effective for persons with hearing, vision, and other communications-related disabilities consistent with Section 504 and ADA. Accessible and auxiliary aids and services are provided as needed, [e.g., materials in Braille, audio, large type, sign language interpreters, computer-assisted real time transcription (CART) services, assistive listening devices, etc.] Applications will be made available ahead of time, and in multiple venues, both physical and online, which will create a more accessible, and more effective application intake;
- c. Use of a Lottery System: Due to the high volume of applications, when opening a previously closed Waiting List for a set period of time, the property will use a lottery to select which applicants will be placed on the Waiting List, and the order in which they will be placed. A public notice will clearly indicate that this system will be used to place applicants on the Waiting List; Further, applicants should be notified that, so long as the application is submitted within the stated timeframe, the timing of the application submission will have no effect on how soon they may be offered a unit. The date and time the lottery is held will be the date recorded on the Waiting List. Any preferences the applicant qualifies for will also be noted on the Waiting List;
- d. Selecting Names from the Waiting List: The property will select names from the Waiting List in chronological order to fill vacancies;
- e. Applicant's Refusal to Accept a Unit: When appropriately sized units are offered to applicants, and an applicant turns down a unit offer two consecutive times, the applicant will be removed from the Waiting List;
- f. Maintaining the Waiting List: In order to maintain a balanced application pool, the property may, at its discretion, restrict application acceptance, suspend application acceptance, and close a Waiting List in whole or in part. Decisions about closing the Waiting List will be based on the number of applications

available, and the ability of the property to house an applicant within a reasonable period of time. Closing the Waiting List, restricting acceptance, or opening the Waiting List must be approved by the Town or its designee;

- g. Advertising: Advertising and outreach activities will be done in accordance with applicable fair housing marketing requirements;
- h. Updating the Waiting List: The Waiting List will be updated at least annually. The applicant is responsible to update the application with any changes that may occur to remain active on the current Waiting List;
- i. Preferences: Assigning preferences to applicants who meet certain criteria is a method intended to provide housing opportunities to applicants based upon household circumstances. Applicants with preferences are selected from the Waiting List and receive an opportunity for an available unit earlier than those who do not have a preference. Preferences affect only the order of applicants on the Waiting List. They do not make anyone eligible who was not otherwise eligible, and they do not change an owner's right to adopt and enforce tenant screening criteria; and
- j. Monitoring: The Town or its designee may request to audit the Waiting List from time to time to ensure compliance.

E. Unit Rents: Rents may not exceed eighty percent (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 eighty percent (80%) and ~~100-~~ one hundred and twenty percent (120%) 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~~ one hundred and twenty percent (120%) 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~~ BMP rental dwelling unit, in order to preserve indefinitely the affordability of the unit for persons of low and moderate income.

#### VI. RENTAL UNITS - NEW ~~SECOND~~ ACCESSORY DWELLING UNITS

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

B. Second Accessory Dwelling Unit Incentive Program: ~~29.10.310 of the Town Code~~ Accessory Dwelling Units (ADU) owners, may choose to participate in the Second Unit an ADU Incentive Program (SUIP) as referenced in Section 29.10.320(a) of the Town Code and as set forth below.

1. The SUIP Incentive Program consists of a no interest construction loan to a property owner who intends to develop a new ~~second~~ ADU 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 one hundred percent (100%) of the construction cost if the unit is income and rent restricted to serve households with incomes below fifty percent (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 eighty percent (80%) of the construction cost if the unit is income and rent restricted to serve households with incomes below eighty percent (80%) of MFI.
2. When a property owner participates in the SUIP Incentive Program, 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, ~~and as well as~~ any other criteria as determined appropriate by the Town.
3. ~~An SUIP Incentive Program loan to construct an second accessory dwelling unit within the Central Los Gatos Redevelopment Project area shall be funded using Redevelopment Affordable Housing Funds and shall remain affordable for 55 years. An SUIP Incentive Program loan to construct an second ADU unit outside the Central Los Gatos Redevelopment Project area shall be funded using BMP Program Funds and shall remain affordable for a minimum of 30 years. The SUIP Incentive Program 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~~ designee for verification of income eligibility. Rental agreements shall be submitted to the Town or its ~~agent~~ designee 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~~ one hundred and twenty percent (120%) of the ~~Median Family Income (MFI)~~ shall have rents restricted to ~~80~~ one hundred and twenty percent (120%) of Fair Market Rents as determined by the ~~Santa Clara County Housing Authority~~ HUD. Units targeted to households with incomes up to fifty percent (50%) of ~~CMF MFI~~ shall have rents restricted to fifty percent (50%) of Fair Market Rents as determined by the ~~Santa Clara County Housing Authority~~ HUD. Tenant rents and incomes will be monitored annually.

## APPENDIX A: Employment Income Calculation Methodology

Annual employment income must be determined for each job currently held. The following methods will be used for calculating household income for qualification purposes for the Town of Los Gatos BMP Program, with the vast majority of households expected to be evaluated under Method One (below). The Town or its designee will apply Method #1 for each job currently held by each household member. If, under the following circumstances, Method #1 is not the most accurate method of projecting of annual income, then at the discretion of Town or its designee, Methods #2-5 may be applied under certain scenarios, including but not limited to the following:

1. Household earns income from commissions;
2. Household is an educator;
3. Household's first pay date for the job was later than January 1<sup>st</sup> of the current year;
4. Household is receiving temporary disability compensation; or
5. Household is a seasonal worker.

### **Method #1: Year-to-Date Income from Paystubs**

Use the most current paystub, divide the year-to-date (YTD) gross income by the current pay period number to get the pay period average. Then multiply the pay period average by the total number of pay periods the household receives in one year.

Example of Calculating Year-to-Date Income with Paystubs:

YTD income as stated on the most recent paystub for the calendar year = \$20,000

Current pay period on most recent pay stub = 10

Estimated pay period amount = \$2,000 (\$20,000 divided by 10)

Total number of pay periods in one year for the household = 24

Annualized pay = \$48,000 (\$2,000 x 24)

### **Method #2: Year-to-date Income and Last Year's Income**

Use the most current paystub (or the last paystub received if the household currently receives no income) to determine the household's year-to-date gross earnings. Add the year-to-date earnings to the household's gross income from the most recent year's income tax return. Divide this number by 12 (to account for last year's earnings) plus the number of months the household's year-to-date income encompasses. This is the average monthly income. Multiply this number by 12 to annualize.

Example of Calculating Income using YTD plus Last's Year's Income:

YTD income as stated on the most recent paystub for the calendar year = \$20,000

Gross income from last year's income tax return: \$50,000

Number of months household has worked this year: 6

\$50,000 + \$20,000 = \$70,000

6 months + 12 months = 18 months

\$70,000/18 = \$3,888.89 (average monthly income)

\$3,888.89 x 12 = \$46,666.67 (annualized income)

### **Method #3: Two-Year Average**

Add the household's total gross income from the two most recent years' income tax returns. Divide this number by 2 to get the two-year average.

*Example of Calculating Income using the Two-Year Average:*

Gross income from last year's income tax return: \$50,000

Gross income from the previous year's income tax return: \$55,000

\$50,000 + \$55,000 = \$105,000

\$105,000/2 = \$52,500 (average annual income)

### **Method #4: Paystub Average**

Add the household's gross income from the two most recent months' paystubs. Divide this number by the number of paystubs included to get the pay period average. Then multiply the pay period average by the total number of pay periods the household receives in one year.

*Example of Calculating Income using the Pay Check Average:*

Total of most recent two months' paystub = \$8,000

Number of pay stubs included = 4

Estimated pay period amount = \$2,000 (\$8,000 divided by 4)

Total number of pay periods in one year for the household = 24

Annualized pay = \$48,000 (\$2,000 x 24)

### **Method #5: Verification of Employment**

Reference the total annual income provided by Household's employer in Verification of Employment form (VOE).

In the above Method #1, Method #2, and Method #4, in cases where employer paid health insurance costs are included within the gross income on a household's paystubs, this income may be excluded from the gross income calculation.

## APPENDIX B: Self-Employment Income Calculation Methodology

Self-employment income calculations will be based on the adjusted income from the two most recent years and a YTD Profit & Loss statement. The adjusted income shall include net income from tax returns with any depreciation or amortization added back. If the resulting adjusted income is negative, count the income as \$0. Negative cash flow from a business may not be used to offset income generated from other sources when determining compliance with income limits.

The Town or its designee will apply the following three income methods to calculate self-employment income. The method used will be determined by how long the household has been self-employed, as follows:

1. If the Household member is self-employed for less than two years but over one-year, annual income will be calculated by either; Method #1; or Method #2. The larger value of the two calculations will be selected as annual self-employment income. In the examples below, the calculation from annualizing Method #2 (\$60,000) is higher, and will be selected as the Household member's self-employment income.
2. If a business started in the same year as the year of qualifying, the income will be calculated using Method #2. In this case, the Household member must supply copies of all invoices and payments made to the Household member in support of the YTD Profit & Loss statement submitted.
3. If the Household member is self-employed for over two years, the Town will apply Methods #1, #2 and #3 to calculate self-employment income, and use the calculation that yields the highest annual income to determine eligibility. In the examples below, the calculation from annualizing Method #2 (\$60,000) is the highest, and will be selected as the Household member's self-employment income.

### Method #1: YTD Profit & Loss Statement and Last Year's Tax Return

#### YTD Profit & Loss Statement and Last Year's Tax Return Calculation:

Use the adjusted YTD Profit & Loss statement to determine the Household member's year-to-date earnings. Add the YTD earnings to the Household member's adjusted income from the most recent year's income tax return. Divide this number by 12 (to account for last year's earnings) + the number of months the Household member's YTD income encompasses. This is the average monthly income. Multiply this number by 12 to annualize.

#### Example of Calculating Income using YTD Profit & Loss Statement and Last Year's Tax Return:

YTD adjusted income as stated on Profit & Loss statement = \$20,000

Adjusted income from last year's income tax return = \$50,000

Number of months from the YTD Profit & Loss Statement = 4

\$50,000 + \$20,000 = \$70,000

4 months + 12 months = 16 months

\$70,000/16 = \$4,375 (average monthly income)

\$4,375 x 12 = \$52,500 (annualized income)

## **Method #2: YTD Profit & Loss Statement**

### *YTD Profit & Loss Statement Calculation:*

Divide the year-to-date (YTD) adjusted income by the number of months on the YTD Profit & Loss statement to get the average monthly income. Multiply this number by 12 to annualize.

### *Example of Calculating Income with YTD Profit & Loss statement:*

YTD adjusted income as stated on Profit & Loss statement = \$20,000

Number of months = 4

Average monthly income = \$5,000 (\$20,000 divided by 4)

Annualized pay = \$60,000 (\$5,000 x 12)

## **Method #3: Two-Year Tax Returns**

### *Two-Year Tax Returns Calculation:*

Add the adjusted income from the two most recent years' income tax returns. Divide this number by 2 to get the two-year average.

### *Example of Calculating Income using the Two-Year Average:*

Adjusted income from last year's income tax return: \$50,000

Adjusted income from the previous year's income tax return: \$45,000

\$50,000 + \$45,000 = \$95,000

\$95,000/2 = \$47,500 (average annual income)

8/5/2020

To: Planning Commission

Fr: Sarah Chaffin

Re: Modification to Town MFI (Median Family Income) for Rental Units to 120% of AMI

Dear Commissioners,

Thank you for the opportunity to weigh in on the possible modification to the Town BMP guidelines for rental housing.

Currently, the Town only goes to a maximum of 80% to 100% of AMI for BMP rental guidelines. This is well below the state RNHA guideline of 120% of AMI. The net effect of the current policy is that essential workers like teachers & school employees, police dispatchers, nursing assistants and other community helpers make too much money to qualify for our BMP rental guidelines but not enough money to live in our community.

I would like to recommend that the Planning Commission supports the Council Policy Committee's recommendation to modify the Median Family Income for owner occupied and rental units to up to 120% of AMI.

This would be in line with state RNHA guidelines and help our valuable essential workers live where they work.

Thank you for your considerations.

Sincerely,



Sarah Chaffin

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**TOWN OF LOS GATOS  
PLANNING COMMISSION  
REPORT**

MEETING DATE: 08/12/2020

ITEM NO: 2

DESK ITEM

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DATE: August 12, 2020  
TO: Planning Commission  
FROM: Joel Paulson, Community Development Director  
SUBJECT: Forward a Recommendation to the Town Council for Approval of Amendments to Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program, Town Wide. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos

REMARKS:

Exhibit 11 includes comments from a Planning Commissioner.

EXHIBITS:

Previously received with August 12, 2020 Staff Report:

1. Required Findings
2. Town Council Minutes, March 5, 2019
3. Town Council Policy Committee Minutes, April 9, 2019
4. Town Council Policy Committee Minutes, August 27, 2019
5. Town Council Policy Committee Minutes, September 24, 2019
6. Town Council Policy Committee Minutes, November 25, 2019
7. Town Council Policy Committee Minutes, January 28, 2020
8. Draft Ordinance
9. Draft Modifications to the BMP Housing Program and Guidelines
10. Public comments received by 11:00 a.m., Friday, August 7, 2020

Received with this Desk Item:

11. Comments from a Planning Commissioner

PREPARED BY: JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Planning Manager and Community Development Director

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**From:** Jeffrey Barnett  
**Sent:** Tuesday, August 11, 2020 4:48 PM  
**To:** Joel Paulson <[jpaulson@losgatosca.gov](mailto:jpaulson@losgatosca.gov)>  
**Subject:** Planning Commission Meeting 8.12.20 Item 2

Good afternoon, Joel.

Below are my comments concerning the proposed changes to the Code and the Guidelines related to the BMP Program. The proposed changes and my comments (in brackets) are in red font.

Would you kindly distribute this as a desk item.

Sec. 29.10.3010. – Program —Intent. The below market price (BMP) program requires the provision of dwellings that persons and families of moderate and low income can afford to buy or rent, and assures to the extent possible that the resale prices of those dwellings, and rents if they are rented, will be within the means of persons and families of moderate **and low** income. **[this harmonizes the statute internally and also with the Guidelines; the missing language appears to be an oversight.]**

Sec. 29.10.3030. - Price. The price of BMP units is controlled for the first buyer and for future buyers by the BMP Guidelines as adopted and amended from time to time by Council resolution and as follows: 1. The initial price is limited to direct construction cost and a proportionate share of the costs of preparing working drawings and specifications and providing on-site and off-site improvements, determined according to rules set by the Council. 2. The initial price does not include the cost of land, profit, or marketing costs. 3. Each BMP unit will be subjected to recorded title restrictions concerning manner of fixture sales, occupancy and leasing. 4. Each buyer of a BMP unit must agree to sell the unit to a moderate **or low** income buyer designated by the Town. The Town will designate moderate income persons according to rules adopted by the Council in effect at the time the seller purchased the unit. 5. The resale price cannot exceed the original selling price plus the value at the time of sale of improvements added by the owner, and plus an amount equal to the increase in cost of living or housing during the owner's tenure. The index or method to be used in calculating the increase is established by the Council. 6. If a BMP unit to be resold has not been properly maintained or for any other reason is in poor condition and in need

of cleaning or repair, the Town may elect to do the work or have it done and recover the cost from the sale price limited as provided in subsection (5). 7. The regulations will specify the period for controlled resales. The time period will be in perpetuity or for as long as is practical. [same comment]

Guidelines – Page 9 - 4. (b) ii

ii. For persons who are retired at the time of application, the applicant’s work history immediately prior to the date of retirement shall be considered in determining the length of employment. The Town may require applicants to submit pay stubs, W-2 forms, tax returns, or other satisfactory evidence as proof of employment at a Santa Clara County business. Length of employment shall be calculated from the **from the final date** for submitting a Town Eligibility Preapplication. [I do not understand the logic here. Should “from” be “to”?]

Guidelines -Page 10 (b) ii

For persons who are retired at the time of application, the applicant’s work history immediately prior to the date of retirement shall be considered in determining the length of employment. The Town may require applicants to submit pay stubs, W-2 forms, tax returns, or other satisfactory evidence as proof of employment at a Santa Clara County business. Length of employment shall be calculated **from the final date** for submitting a Town Eligibility Preapplication. [same issue here].

Guidelines – Page 11 (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. **These time limits may be extended by the Town for good cause.** [the timeline benchmarks may be too short].

Guidelines – Page 16 D a

a. The Town or its designee will provide the “BMP Renter Occupancy Certification Form” to all BMP tenants who have lived in a BMP unit for at least one year. If the BMP renter fails to submit a signed Occupancy Certification Form within thirty (30) days of the written request, then the lease shall automatically terminate, and the rent will increase to market rate, as determined by the apartment owner, property manager **or the Town** within sixty (60) days of written notice from the apartment owner/property manager. [In the case of multifamily developments, such as condominiums and planned developments, there is no “apartment

owner”, and any retained property manager for the common interest development is unlikely to accept this responsibility. The Town should be able to set the fair market rate in the event of a tenant’s failure to timely submit a signed Occupancy Certification Form]

Guidelines – Page 17 6

6. Executed Lease Agreement and BMP Addendum: The apartment owner, property manager or tenant shall provide the Town or its designee with a copy of the executed lease agreement and BMP Addendum within five (5) business days of execution. [similar concern]

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