

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS  
AMENDING CHAPTER 29 (ZONING REGULATIONS) OF THE TOWN CODE REGARDING  
THE BELOW MARKET PRICE PROGRAM**

**WHEREAS**, Chapter 29 (Zoning Regulations) of the Town Code of the Town of Los Gatos regulates the Below Market Price Program; and

**WHEREAS**, on April 9, 2019, the Town Council Policy Committee held a public hearing to consider possible amendments to the current regulations regarding the Below Market Price Program. The Policy Committee continued the matter to August 27, 2019, and directed staff to bring back possible amendments to the Town Code and potential modifications to the Below Market Price Housing Program Guidelines for further discussion; and

**WHEREAS**, staff prepared draft amendments for the Policy Committee's consideration; and

**WHEREAS**, on August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020, the Policy Committee held public hearings to consider amendments to Division 6 of the Town Code; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Planning Commission for public hearing on August 12, 2020; and

**WHEREAS**, on August 12, 2020, the Planning Commission held a public hearing to consider amendments to Division 6 of the Town Code. The Planning Commission recommended that the Town Council approve the amendments with modifications; and

**WHEREAS**, this matter was regularly noticed in conformance with State and Town law and came before the Town Council for public hearing on October 6, 2020; and

**WHEREAS**, on October 6, 2020, the Town Council reviewed and commented on the amendments to Chapter 29 of the Town Code and the Town Council voted to introduce the Ordinance.

ATTACHMENT 1

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DO  
HEREBY ORDAIN AS FOLLOWS:**

**SECTION I**

Chapter 29 of the Los Gatos Town Code is hereby amended as follows:

**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 and low 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 (~~d~~ 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 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); and
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)

## **SECTION II**

With respect to compliance with the California Environmental Quality Act (CEQA) and General Plan, the Town Council finds as follows:

A. These Town Code amendments are exempt from review under CEQA pursuant to sections and 15061(b)(3), in that it can be seen with certainty that there is no possibility that the amendments to the Town Code would have a significant effect on the environment; and

B. The amendments to the Town Code are consistent with the General Plan.

## **SECTION III**

If any provision of this Ordinance or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

## **SECTION IV**

Except as expressly modified in this Ordinance, all other sections set forth in the Los Gatos Town Code shall remain unchanged and shall be in full force and effect.

## SECTION V

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 6<sup>th</sup> day of October 2020 , and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 20th day of November 2020. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS  
LOS GATOS, CALIFORNIA

DATE: \_\_\_\_\_