

ORDINANCE NO. _____ NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING NEW CHAPTER 14.08 “IN-LIEU HOUSING FEE” TO TITLE 14 (HOUSING) OF THE MORGAN HILL MUNICIPAL CODE, ESTABLISHING IN-LIEU FEES FOR NEW RESIDENTIAL DEVELOPMENT OWNERSHIP AND RENTAL PROJECTS WITHIN THE CITY AND ADDING CHAPTER 14.12 “BELOW MARKET RATE PROGRAM” WHICH INCORPORATES A NEW BELOW MARKET RATE OWNERSHIP PROGRAM PARTICIPATION GUIDE AND A NEW BELOW MARKET RATE OWNERSHIP PROGRAM APPLICATION GUIDE, AND REPEALING CHAPTERS 15.22 “AFFORDABLE HOUSING FEE” AND 15.23 “BELOW MARKET RATE PROGRAM”

WHEREAS, this proposed Ordinance was considered by the City Council of the City of Morgan Hill at its regular meeting of October 17, 2018; and

WHEREAS, testimony received at a duly-noticed public hearing on the proposed Ordinance, along with exhibits and other materials submitted as a part of public hearing, have been considered in the review process; and

WHEREAS, to increase the supply of affordable housing in Morgan Hill, the City of Morgan Hill has both a 15% (outside of downtown) and a 10% (within downtown) Inclusionary Housing Ordinance, and the Residential Development Control System (“RDCS”) that awards points to projects correlated to the provision of affordable housing in the proposed development; and

WHEREAS, applicants competing in the RDCS competition obtain points to satisfy the affordable housing requirement to build a percentage of their project as Below Market Rate (BMR) units or in some cases they pay the In-Lieu Housing Fee in lieu of building affordable housing on-site; and

WHEREAS, since 1977, the City has amassed one of the largest BMR property portfolios per capita in the State and established a BMR Program that provides ownership and rental opportunities and affordability to very low, low and moderate-income households; and

WHEREAS, the City retained Keyser Marston and Associates (KMA) to conduct an analysis of the impact of the City’s Inclusionary Housing Ordinance and the RDCS BMR requirements, and to:

1. Estimate the financial cost to developers of providing on-site BMR ownership and rental units equivalent to the percentages adopted in the Inclusionary Housing Ordinance ;
2. Provide a comparison of the cost of providing on-site BMR units to the RDCS program’s in-lieu fee and, if appropriate, recommend changes to the in-lieu fee amount so that it more closely approximates the cost of providing on-site units in today’s market; and

WHEREAS, KMA recommended an ownership housing in-lieu fee of \$19.70 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and \$13.20 per square foot for ownership projects in the downtown where there is a 10% Inclusionary Housing Requirement. The recommended fees for Rental projects are \$29.00 per square foot for residential development outside of downtown where there is a 15% Inclusionary Housing Requirement, and \$14.50 per square foot for projects in the downtown where there is a 10% Inclusionary Housing Requirement. This would replace the previously adopted \$12.92 per square foot of the total project's livable space; and

WHEREAS, the Legislature of the State of California has found that the availability of housing is of critical statewide importance, and that providing housing for all Californians requires the cooperative participation of state and local governments and the private sector; and

WHEREAS, the City intends to establish In-Lieu Housing Fees in order to promote this objective, mitigate the impacts of new market-rate housing development on the need for affordable housing, assist in meeting the City's share of the Regional Housing Needs Allocation (RHNA), and assist in implementing the goals, policies and actions specified in the Housing Element of the City's General Plan; and

WHEREAS, the City Council adopted an Inclusionary Housing Ordinance No. 2278 on July 25, 2018, establishing a requirement for Residential Projects consisting of two (2) or more dwelling units where at least fifteen percent (15%) of all units in Projects outside of downtown shall be inclusionary units that shall be made available at affordable rents or affordable sales prices. For-Sale and Rental Projects consisting of two (2) or more dwelling units located within downtown are required to restrict ten percent (10%) of the dwelling units to be made available at affordable rents or affordable sales prices.

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 14.08 of Title 14 is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.08 – IN-LIEU HOUSING FEES

14.08.010 Findings and Purpose.

14.08.020 Fee Established.

14.08.030 Applicability

14.08.010 Findings and Purpose.

1. Need for in-lieu housing fees. The City Council has determined, based on the City's General plan including the housing element, and existing statutes and regulations of the State of California, that the In-Lieu Housing Fee is needed in order to finance the preservation of the existing Below Market Rate Portfolio, the administration of the Housing Program, future affordable housing programs and new projects.

2. Consistency with City General, Specific and Master Plans. In establishing the In-Lieu Housing Fee, the City Council finds that it is consistent with the City's General plan, including the housing element and applicable specific plans and master plans.
3. The City of Morgan Hill Residential Development Control System (“RDCS”) awards competing developments points for construction of very low, low-income and moderate-income housing or for the contribution of In-Lieu Housing Fees to the Housing In-Lieu Fee Fund.
4. Since 1977, the City has amassed one of the largest below market rate (“BMR”) property portfolios per capita in the State and established a BMR Program that provides ownership opportunities and affordability to very low, low-income and moderate-income households.
5. In-Lieu Housing Fees provide for the cost of administering the City’s Housing Program, maintaining the BMR portfolio, as well as the creation and preservation of affordable units, as funding is available.

14.08.020 – Fee Established.

1. There is created an In-Lieu Housing Fee for new residential development for Residential Projects that are required or which volunteer to pay an In-Lieu Housing Fee.
2. For-Sale Residential Projects Outside of Downtown. The In-Lieu Housing Fee for “For-Sale” Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is nineteen dollars and seventy cents (\$19.70) per habitable square foot of the residential building area of market-rate housing.
3. For-Sale Residential Projects Within Downtown. The In-Lieu Housing Fee for “For-Sale” Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is thirteen dollars and twenty cents (\$13.20) per habitable square foot of the residential building area of market-rate housing.
4. Rental Residential Projects Outside of Downtown. The In-Lieu Housing Fee for “Rental” Residential Projects *outside of downtown* for which there is a 15% Inclusionary Housing Requirement is twenty nine dollars (\$29.00) per habitable square foot of the residential building area of market-rate housing.
5. Rental Residential Projects Within Downtown. The In-Lieu Housing Fee for “Rental” Residential Projects *within the downtown* for which there is a 10% Inclusionary Housing Requirement is fourteen dollars and fifty cents (\$14.50) per habitable square foot of the residential building area of market-rate housing.
6. Basis for calculation of the In-Lieu Housing Fee. The City approves, adopts and incorporates the summary report from Keyser Marston Associates (KMA), entitled “Summary of Per Square Feet In-Lieu Fee Amounts for Ownership Projects Equivalent to Range of On-site BMR Requirements, and Summary of Per Square Feet In-Lieu Fee Amounts for Rental Projects Equivalent to Range of On-site BMR Requirements for Morgan Hill” dated September 25, 2018. This establishes the value of the In-Lieu Housing Fee, which is determined to be a fair and effective fee to maintain the BMR Program.

14.08.30 Applicability

1. The In-Lieu Housing Fees are established for Residential Projects and will be incorporated into development agreements entered into after the effective date of this ordinance.
2. All collected In-Lieu Housing Fees shall be used to finance the administration and implementation of affordable housing programs and projects within the City of Morgan Hill in support of the goals and objectives established in the City of Morgan Hill housing element.
3. The In-Lieu Housing Fee per square foot resulting from a calculation of total livable space of the market rate project, excludes the garages and other non-habitable space when calculating the total square feet of the project.
4. The In-Lieu Housing Fee will be paid by developers to satisfy their required contribution to the Housing In-Lieu Fee Fund.
5. Example Calculations of In-Lieu Housing Fee:
 1. Amount, \$19.70: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$19.70 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$2,206,400$.
 2. Amount, \$13.20: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$13.20 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,478,400$.
 3. Amount, \$29.00: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$29.00 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$3,248,000$.
 4. Amount, \$14.50: Project has 56 market rate units. The average habitable square footage of each unit is 2,000 square feet. The In-Lieu Housing Fee contribution shall be = $\$14.50 \times 56 \text{ units} \times 2,000 \text{ square feet} = \$1,624,000$.
6. The In-Lieu Housing Fee must be provided to the Housing Division in proportion to the market rate units being delivered prior to Housing Division signing off for occupancy.
7. Whenever application of the Inclusionary Housing Requirements results in a fractional number of required Inclusionary Units of .49 or less, the Applicant may elect to pay the In-Lieu Housing Fee instead of developing the Inclusionary Unit.
8. Example Calculation of Fractional In-Lieu Housing Fee: the fractional BMR threshold is .5 to encourage the construction of new BMR units. The program applies the fractional fee to fractional requirements less than 0.5 of a unit. Project has 56 total units; average size of market rate units is 2,000 square feet. To receive maximum RDCS points the 56-total unit project has committed to a 15% affordable commitment, $56 \text{ units} \times 15\% = 8.4$. This equates to 8 on-site BMR units and a fractional fee payment due for the “.4” units. First, calculate the implicit in-lieu fee: $56 \text{ units} \times 2,000 \text{ square feet} \times \$19.70 \text{ per SF} = \text{an implicit in-lieu fee of } \$2,206,400$. From that implicit in-lieu fee, calculate the per BMR unit cost: $\$2,206,400 / 8.4 = \$262,666$. per BMR unit cost. The fractional payment owed for this project.

SECTION 2. Chapter 14.12 Below Market Rate Program of Title 14 (Housing) is hereby added to the Morgan Hill Municipal Code as follows.

Chapter 14.12 – Below Market Rate Program

14.12.010 Purpose and Findings

14.12.020	Definitions
14.12.030	Applicability
14.12.040	Duties of Program Administrator
14.12.050	Occupancy and Sale Restrictions
14.12.060	Affordable Housing Agreement
14.12.070	Approved Program Participants and Vendors
14.12.080	Default, Foreclosure, and Loss of Unit
14.12.090	Annual Report
14.12.100	Enforcement
14.12.110	Below Market Rate (BMR) Ownership Program Participation Guide
14.12.120	Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers
14.12.130	Below Market Rate (BMR) Program Development Standards

14.12.010 – Purpose and Findings.

The City Council finds that:

1. The City of Morgan Hill Residential Development Control System ("RDCS"), awards competing developments points for provision of low-income and moderate-income housing and housing for the elderly.
2. Since 1977, the City has amassed one of the largest below market rate ("BMR") property portfolios in the state and established a BMR program that provides ownership opportunities and affordability to low-income and moderate-income households.
3. The excess sales proceeds value in each below market rate property represents a bona fide City asset that subsidizes the affordability for each BMR property owner ("owner") and is a vehicle that can be used to renovate older units, build new units and help pay for program administration.
4. The City recognizes that the declaration of restrictions, which secures the excess sale proceeds, is a covenant that runs with the land by and between the BMR property owner and the City of Morgan Hill that restricts the right of use or enjoyment and should be enforced judicially.
5. A program and program guidelines are essential to maintain integrity of the BMR program and compliance therewith and these guidelines and policies will be updated from time to time to address challenges and changes in the market and economic environment.
6. In order to respond to program needs, the City Manager or his or her designee should be empowered to approve BMR program guidelines and BMR agreements.
7. In order to ensure compliance with the City's program the program must be actively administrated. The administration of the program can be achieved by City staff and/or an outside Administrator. The City is empowered to delegate the day-to-day management of the program to a third-party Administrator.
8. Either in-house or third party administration is vital to ensure program integrity and continued affordability of below market rate properties.

9. In response to the dissolution of the City's redevelopment agency, schedules have been put in place to pay for the costs of services funded by former redevelopment agency funds.

14.12.020 - Definitions.

When used in this chapter, these terms mean the following:

1. "Adjacent lots" means parcels with boundary lines that touch at any point. "Adjacent lots" includes parcels that are separated only by a private or public street, other than highways and expressways, or that are separated only by other parcels owned or controlled by the same owner or applicant.
2. "Administrator" means below market rate program Administrator which may either be the City itself or a third party Administrator acting as an agent for the City in connection with all aspects of the operation of the City's below market rate program pursuant to an agreement entered into between the City and the Administrator, as such agreement may be amended or replaced from time to time.
3. "Area median income (AMI)" means the median household income of households in Santa Clara County, adjusted for household size, as determined and published by the California Housing and Community Development Department (HCD).
4. "BMR assisted housing" means any project that receives development funding from any local, state, or federal governmental or non-profit source, which meets the criteria for below market rate housing.
5. "Assumed household size" means, for the purpose of establishing affordable sales prices, a household with a total number of members equal to the number of bedrooms in the below market rate home, plus one, consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules (if any). For example, the assumed household size for a three-bedroom home is a four-person household.
6. "Below market rate (BMR) ownership housing" means dwelling units developed to be sold and affordable to lower to moderate income households and regulated by this chapter. "BMR unit" means one BMR ownership housing dwelling unit.
7. "CC&Rs" means, covenants, conditions and restrictions containing a covenant that runs with the land existing in favor of the City where a development project contains at least one BMR unit.
8. "Covenant that runs with the land" means the BMR property interest held by the City of Morgan Hill as a result of the recorded declaration of restrictions that restrict the right of use of enjoyment by the BMR owner-occupant.
9. "Decision-making body" means the Planning Commission or City Council, whichever is authorized to make a final decision on the project application for land use approvals.
10. "Excess sale proceeds" means the difference between the fair market value of a BMR property and the maximum restricted resale price.
11. "Eligible buyer" means a household which meets the requirements of this chapter to buy, or in the case of acquisition of a BMR unit through devise or inheritance, to occupy,

a BMR unit; or a public or non-profit housing agency able to acquire and manage dwelling units for rental to eligible persons.

12. "Fee schedule" means the schedule of fees, adopted by City Council resolution and published annually, that outlines charges to program participants, including, but not limited to applicants, owner-occupants, housing professionals and developers.
13. "Gross annual household income" means the gross, pre-tax income of all adult occupants of the applicant household, and as may be further defined in the BMR ownership housing guidelines.
14. "Housing cost" means the monthly mortgage payment (principal and interest), property taxes, owners' association dues, and owner's insurance.
15. "Low income household" means a household with a gross annual household income between fifty-one percent and eighty percent of AMI for Santa Clara County. This definition corresponds to the definition of lower income household used for state- and federally-assisted housing programs.
16. "Market rate unit" means a dwelling unit that is not subject to the occupancy or sale regulations in this chapter or any other affordability restrictions or covenants.
17. "Moderate income household" means a household with a gross annual household income between eighty to one hundred twenty percent of AMI for Santa Clara County. This definition corresponds to the definition of moderate income household for state-assisted housing programs.
18. "Project" means one or more applications filed for City approval of a residential development. "Project" includes a development across adjacent lots or a multi-phased development, on the same or adjacent lots. "Project" also includes developments on adjacent lots for which applications are filed by the same owner or applicant within a period of ten years.
19. "Property" means properties contained with the below market rate program portfolio subject to occupancy and sale restrictions.
20. "Very low income household" means a household with a gross annual household income that does not exceed fifty percent of AMI for Santa Clara County. This definition corresponds to the definition of very low income household used for state- and federally-assisted housing programs. Very low income households are a subset of lower income households.

14.12.030 - Applicability.

- A. Residential Development Control System ("RDCCS"). All projects subject to RDCCS that provide units to meet the City's need for low and moderate income and elderly housing and the extent to which such units meet the goals of the housing element of the general plan, including the distribution of housing types to provide neighborhoods of ethnic and economic diversity.
- B. BMR Ownership Housing Guidelines. The Administrator develops detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this

chapter. The BMR ownership housing guidelines shall be approved by the City Manager or the City Manager's designee, and approved by the City Council from time to time.

- C. BMR Program Letters. BMR program letters may be issued by the Administrator to update procedures and guidelines not yet incorporated into the BMR ownership housing guidelines. These letters shall be approved by the City Manager or designee and serve as amendments to the guidelines that will be published online and made available to the public including guidelines for refinances, purpose and hardship review.
- D. BMR Agreements. Declaration of restrictions and affordable housing agreements may be amended from time to time subject to the approval by the City Manager or the City Manager's designee.

14.12.040 - Duties of Program Administrator.

The City may either handle in-house or contract responsibility for administration of the BMR ownership housing program and monitoring compliance with the requirements to a program Administrator pursuant to an agreement executed between the City and the Administrator.

The Administrator shall perform the following services, among others:

1. Maintain and update the BMR ownership housing guidelines and BMR program letters;
2. Conduct ongoing homebuyer education training programs, including preparation of program materials;
3. Screen and select qualified buyers according to BMR ownership housing guidelines and maintain qualified owner eligibility list;
4. Assist in seeking and arranging mortgage financing for purchase of the below market units;
5. Administer programs for monitoring compliance with terms and conditions of the occupancy and sale restrictions;
6. Administer BMR ownership housing guidelines concerning sale and resale of the below market units at a restricted price, including exercise of the City's option to buy the below market units upon assignment of such option, and assist in resale of the unit to eligible purchasers or families; and
7. In cases of default, administer the process of taking possession of the BMR property as appropriate, and completing the acquisition, rehabilitation and resale to an eligible buyer.

14.123.050 - Occupancy and Sale Restrictions.

Recordation of Declaration of Restrictions. Before issuance of any building permit for a BMR unit, the property owner, Administrator, and the City shall execute and record a declaration containing the occupancy and sale restrictions in this chapter. The declaration establishes a valid and enforceable covenant that runs with the land in favor of the City and is binding to the heirs, assigns and successors in interest of the property owner.

1. Timing of Sale. At completion of each BMR unit, the Administrator will be contacted to coordinate the sale of the property to an eligible buyer. The seller shall accept the first

valid offer from a buyer deemed eligible by the Administrator, and shall cooperate to close escrow within the timeframe outlined in the affordable housing agreement.

2. **Term of Restrictions.** BMR units shall be reserved for lower and moderate income households subject to guidelines of the RDCS and shall be subject to the occupancy and sale restrictions for a specified period of time. This term begins upon sale to an eligible buyer. If the BMR unit is sold to another eligible buyer during the term, a new term shall begin upon resale and shall be secured by a new declaration of restrictions.
3. **Maximum Sales Price.** The Administrator shall establish and publish annually the maximum sale prices for each BMR unit size in the BMR ownership housing guidelines as approved by the City Manager. The maximum BMR unit sale prices shall not exceed a price affordable to households at the applicable income level, based on a predetermined housing cost, specified with a maximum percentage of monthly gross household income for the unit's assumed household size. The percentage of AMI used shall be published annually by the Administrator.
4. **Sale Requirements.** The following requirements shall be met in any sale and resale of a BMR unit after the issuance of a building permit and during the term of restrictions:
 - a. The seller shall notify the Administrator of the intent to sell before offering the unit for sale, contacting a real estate agent or listing the property on any listing service
 - b. The Administrator shall respond to the seller with the sales procedure and maximum sale price
 - c. The Administrator shall follow the process outlined in the BMR Ownership housing guidelines to locate and deliver an eligible buyer to complete the home purchase
 - d. The eligible buyer shall execute and record a new declaration of restrictions which incorporates all current occupancy and sale restrictions in this chapter and in the BMR ownership housing guidelines; and
 - e. Closing costs and title insurance fees shall be paid or according to the BMR ownership housing guidelines.
5. **Eligible Buyers.** The Administrator shall determine the eligibility of prospective buyers of BMR units. It is prohibited for any person to willfully make a false or misleading representation or fail to disclose information for the purpose of qualifying as eligible to purchase a BMR unit. Prospective buyers must meet the following requirements:
6. **Income Limits.** The prospective buyer's combined household income and assets shall not exceed specific household income limits, as further defined in the BMR ownership housing guidelines;
7. **Conflict of interest.** The following individuals, by virtue of their position or relationship, are ineligible to purchase a BMR unit:
 - a. Any Administrator, City official or employee who administers or has policy-making authority over City housing programs;
 - b. The developer of the unit; or

- c. The immediate relative or employee of, and anyone gaining significant economic benefit from a direct business association with, Administrator employees, City employees, officials, developers, or owners who are not eligible to purchase a BMR unit; and
8. Additional Criteria. The Administrator may establish other reasonable eligibility criteria, ownership and occupancy requirements in the BMR ownership housing guidelines to ensure the buyer's ability to close escrow, maintain ownership of the unit, and to ensure effective operation of the program and equitable access to the units among eligible buyers.
9. Occupancy and Rental Restrictions. BMR units shall be occupied as the primary residence of the eligible buyer for the duration of their ownership of the unit and shall not be rented to other occupants at any time, except that:
 - a. BMR units that are owned by a public or nonprofit housing agency may be rented to eligible households with prior written approval of the Administrator; and
 - b. The Administrator may allow the temporary rental of a BMR unit upon a finding of hardship beyond the control of the owner and after a full review of the hardship documentation.
10. Refinancing. BMR home owners shall not refinance a BMR unit without prior written approval of the Administrator. BMR units shall not be used as collateral to secure liens or debts with a combined loan to value ratio in excess of the BMR ownership housing guidelines of the maximum BMR resale price applicable to the unit at the time of the proposed refinancing.
11. Additional Refinancing Criteria. The Administrator may establish other refinancing criteria in the course of seeking financing to change the rate and/or term of a mortgage, consolidate purchase money lines or cash out a portion of the excess sale proceeds that would be due to the owner upon sale.

14.12.060 - Affordable Housing Agreement.

A. Required Before Final Map or Building Permit. Before final recordation of a subdivision map or issuance of any building permits for the project, whichever occurs first, the property owner shall execute and record an affordable housing agreement (agreement) with the Administrator and City outlining the details of the below market rate unit commitment as outlined in the "specific restrictions and requirements (including RDCS requirements)" of the development agreement.

B. Agreement Provisions. The agreement shall include, at a minimum, the following provisions:

1. Binding of Persons. A provision that binds the heirs, assigns, and successors in interest of the property owner to the agreement;
2. Binding of Project Site. The obligation for the entire project site to fulfill the for the project under this chapter;
3. Liens. A lien on each unit identified to meet the BMR ownership housing requirement, or if the alternative to pay an in-lieu fee is approved, a lien on every unit;

4. Transaction Processing Fee. For each BMR unit, the developer shall pay a BMR transaction processing fee to the City according to the most current fee schedule approved by the City. The City may provide this fee to the Administrator as an offset to charges incurred. This fee is not a real estate commission or real estate broker commission. This fee shall be listed as an "additional settlement charge" fee paid by the seller as reflected in section 1300 of the U.S. Department of Housing and Urban Development (HUD) Settlement Statement (HUD-1) or "other costs" paid by the seller in the new closing disclosure as determined by the TILA-REPA Integrated Disclosure rule.
5. Project Covenants, Conditions and Restrictions. A provision that prohibits any amendments to the development's covenants, conditions and restrictions that would increase the proportion of the owners' association dues or assessments payable by any BMR unit. The provision must also acknowledge the covenant that runs with the land in favor of the City where the development project contains at least one BMR unit. This provision shall create a right of judicial enforcement by the City or the owner of any affected BMR unit.
6. Enforcement. A provision that shall require the property owner to pay the City rent for a BMR unit from the date of any unauthorized use of the unit, and for the City's recovery of reasonable attorney's fees and costs to pursue legal action in enforcing this agreement.
7. Amendments. Major amendments to the agreement, including any proposal to change any approved alternatives shall be reviewed by the decision-making body. Minor amendments to the agreement may be reviewed by the Administrator. Upon approval, a new agreement containing the amendments shall be executed and recorded.

14.12.070 - Approved Program Participants and Vendors.

The City and Administrator shall maintain a list of approved program participants and vendors to protect the integrity of the BMR program, BMR properties contained within the portfolio, and excess sale proceeds. The approval requirements and process will be included in the BMR ownership housing guidelines. The program participant list will include, but will not be limited to:

1. Mortgage Lenders. Due to the integral role that mortgage loan officers and lenders play in purchase and refinance transactions, first mortgage and subordinate loan officers and lenders must be approved by the Administrator and a lender agreement will be put in place concerning BMR program compliance during loan origination, underwriting and servicing. In no event shall a deed of trust securing any loan to a BMR Owner be valid or enforceable as to any recorded interest, resale agreement or option of the City of Morgan Hill unless the following conditions are satisfied:
 - a. The City of Morgan Hill or its Administrator has first approved the loan;
 - b. The loan is in accordance with the BMR ownership housing guidelines and any and all recorded deed restrictions;
 - c. The City of Morgan Hill or its Administrator has expressly subordinated its recorded restrictions to the specific deed of trust; and
 - d. Prior to making any loan to a BMR property owner for the purchase of a BMR unit intended to be secured by a deed of trust against the BMR unit, a lender shall disclose to the City of Morgan Hill or its Administrator the following information:

- i. The borrower's loan application describing the loan terms; and
 - ii. Provide an acknowledgement in writing that the total encumbrance does not exceed the maximum restricted resale value for the BMR unit as determined by the City of Morgan Hill or its Administrator according to the BMR ownership housing guidelines.
2. Real Estate Agents. Real estate agents and brokerages involved in the purchase or sale of BMR properties must be approved by the Administrator and a vendor agreement will be put in place concerning BMR program compliance during the listing, purchase and escrow process.
3. Escrow Companies. An approved list of escrow officers and escrow companies will be maintained by the Administrator.
4. Contractors. For work on BMR properties that exceed certain dollar amounts, as outlined in the BMR ownership housing guidelines, an approved list of contractors will be maintained by the Administrator.

14.12.080 - Default, Foreclosure, and Loss of Unit.

- A. Default. Upon declaration of a default by the City of any agreement between the City and the owner or if the owner or owner's proposed purchaser makes any misrepresentation in connection with receiving any benefits under the declaration of restrictions, the City or Administrator may apply to a court of competent jurisdiction for specific performance of this chapter, for an injunction prohibiting a proposed sale or transfer in violation of this chapter, for a declaration that a transfer in violation of this chapter is void or any such other relief at law or in equity as may be appropriate.
- B. Option to Purchase. If a notice of default is recorded on a BMR unit by a third party secured creditor or a lien is filed against the BMR unit, or any breach of any provision of any agreement between the City and the owner, and the owner fails to correct it, an eligible buyer, or the Administrator on behalf of the City or the City itself, may purchase the unit. The unit shall be purchased at a sale price equal to the amount the owner would have received on the date of the foreclosure sale under the BMR ownership housing guidelines. The eligible buyer may purchase the unit by paying any amounts due to lien holders and paying to the owner any balance of funds remaining after payment of the costs of sale and any repairs chargeable to the owner. All other resale provisions of the guidelines apply.
- C. Loss of Unit. BMR units which have not been completed or sold to initial eligible buyers shall not be released from the restrictions of this chapter through a trustee's sale or judicial foreclosure.
- D. Distribution of Proceeds. This subsection applies to any BMR unit lost by sale at a trustee's sale or foreclosure, destruction, condemnation, or by liquidation of the owners' association. If a BMR unit is restored, the remaining term of occupancy and sale restrictions shall continue upon completion. Any proceeds remaining after payment of encumbrances on the unit shall be distributed as follows.

1. Owner. To the owner, up to the net amount the owner would have received under the sale price in the BMR ownership housing guidelines if the City had purchased the unit on the date of the loss; and
2. City. To the City, any surplus remaining after payment to the owner.

14.12.090 - Annual report.

The Administrator shall provide an annual informational report to the City Council on the status of BMR units developed under this chapter. The report shall include the number, size, type, tenure, and general location of each BMR unit completed during the year, as well as the number of BMR resales and BMR defaults and losses, if applicable.

14.12.100 - Enforcement.

The City, or Administrator if authorized, may institute injunction, mandamus, or any appropriate legal actions or proceedings necessary for the enforcement of this chapter, including actions to suspend or revoke any permit, including a development approval, building permit or certificate of occupancy; and for injunctive relief or damages.

14.12.110 Below Market Rate (BMR) Ownership Program Participation Guide

The purpose of the Below Market Rate (BMR) Ownership Program Participation Guide (Ownership Guide) is to describe the BMR Program policies and procedures to an existing BMR homeowner who is a Program participant. The Ownership Guide includes the following and is intended to be an overview for a Program participant who is occupying a BMR home. The Ownership Guide describes the policies and procedures for a BMR homeowner, including:

- Program participation guidelines
- Resale price determination and Household Information Profiles
- Sale proceeds and owner's minimum return on down payment
- Agreement compliance at the point of sale or refinance
- Ownership and estate planning
- Compliance and annual certification
- Refinance and subordination requests
- Capital Improvements and Special Assessments
- Ownership Changes, Re-Sales, and Approved Vendors

The Ownership Guide is prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed and may serve as amendments to the Ownership Guidelines that will be published online and made available to the public.

14.12.120 Below Market Rate (BMR) Ownership Program Application Guide for Potential Homebuyers

The purpose of the Below Market Rate (BMR) Ownership Program Application Guide (Application Guide) describes the BMR Program policies and procedures to a prospective BMR homeowner who is considering the BMR Program application process. The Application Guide includes the following and is intended to be an overview for a Program applicant who is considering applying for a BMR home.

- Application process and selection, opportunity drawing methods
- File Structure and Application Criteria, Online Web Portal, Establishing an Account
- Education Title and Mortgage Requirements
- Eligibility and Preference Criteria for Ownership of BMR Units
- Occupancy Standards for BMR Units
- Income Eligibility Criteria and Preference Criteria
- Asset Limitation Criteria
- First Time Homebuyer Criteria and Title Requirements
- Household Information Profiles
- Application Criteria
- Transaction and Document Handling
- Reasonable Accommodation
- Below Market Rate Pricing and City's Option to Purchase

The Application Guide may be prepared by the City and/or the Administrator to provide procedures and guidelines. Any updates shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the Application Guidelines that will be published online and made available to the public.

14.12.130 Below Market Rate (BMR) Program Development Standards

- A. Development Standards approved by City Council are designed to guide the implementation and construction of the Below Market Rate (BMR) units, to ensure quality homes are built consistent with the character of the neighborhood, and providing guidance for the inclusion of materials and amenities within each unit.
- B. The BMR Development Standards are generally intended to apply to development projects where proposed BMR inclusionary units will be constructed by a developer constructing a market rate project, but these BMR Development Standards would not typically apply to publicly financed 100 percent affordable housing projects.
- C. The City may consider instances where deviations from these standards may be appropriate for the provision of inclusionary or affordable units. The designated reviewing body shall make a finding to this effect prior to any approval or any issuance of permits (i.e., Community Development Director, Planning Commission, or City Council). This includes, but is not limited to:
 1. When the deviation results in a greater number of affordable units and/or broaden affordability levels to help the City implement its Housing Element and achieve RHNA goals.

2. Developments in which a market rate developer is partnered with an affordable housing developer in which the market rate developer develops only the market rate units while the affordable housing developer develops the affordable units, some of the BMR Program Development Standards, such as the distribution throughout the project requirement, may not apply or may need to be adjusted.

D. Any updates to the BMR Program Development Standards shall be approved by the City Manager or the City Manager's designee from time to time as needed, and serve as amendments to the BMR Program Development Standards that will be published online and made available to the public.

SECTION 3. Subsection D of Section 14.04.060 is repealed.

SECTION 4. Chapters 15.22 "Affordable Housing Fee" and Chapter 15.23 "Below Market Rate Program" of the Morgan Hill Municipal Code are hereby repealed in their entirety.

SECTION 5. The revised Below Market Rate (BMR) Program Development Standards are hereby adopted.

SECTION 6. The City Council hereby finds that the proposed Ordinance is exempt from the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of Guidelines for CEQA. The proposed In-Lieu Housing Fee and Below Market Rate Program Ordinance are covered by the general rule that CEQA applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Adoption of this ordinance does not create changes in the physical environment and is therefore exempt pursuant to the exemption described above.

SECTION 7. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 8. Effective Date; Publication. This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 17TH DAY OF OCTOBER 2018 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF _____, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:

APPROVED:

STEVE TATE, Mayor

ATTEST:

DATE:

IRMA TORREZ, City Clerk

Effective Date:

∞ CERTIFICATE OF THE CITY CLERK ∞

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. _____, New Series adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the ___th day of _____ 2018.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: _____

IRMA TORREZ, City Clerk