

Chapter 17.136 - Housing

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17.136.010 - Purpose of Chapter

The purpose of this chapter is to:

- A. Encourage the development and availability of housing that is affordable to a broad range of households with varying income levels within the town as mandated by State law, Government Code Section 65580;
- B. Promote the Town's goal to add to, and preserve the existing stock of affordable and workforce housing units within the town;
- C. Mitigate the impacts of market rate residential and non-residential development on the need for affordable and workforce housing in the town through the imposition of affordable and workforce housing requirements as included in this chapter; and
- D. Implement the goals, objectives, policies, and programs of the General Plan and Housing Element related to affordable and workforce housing.

17.136.020 - Housing Mitigation Requirements for Residential Ownership Developments

- A. **Residential Ownership Development.** For all transient and non-transient residential ownership developments including condominiums, fractional ownership, and single-family or other subdivisions of nine or more units, a proportion ("inclusionary rate") of the total units shall be below market rate (BMR) units. The inclusionary rate and affordability level of BMR units (stated as a proportion of Area Median Income (AMI)) shall be established by Council Resolution as specified in Subsection B., below. The type and number of BMR units required for a particular residential ownership development will be determined as follows:
 - 1. The inclusionary rate shall be based on the total number of units in the project inclusive of the required BMR units: e.g. if the inclusionary rate is established at 10 percent, a 10 unit project will have nine market rate units and one BMR unit.

Such units shall be for-sale units, unless the builder/developer chooses the rental alternative specified in Section 17.136.060 of this chapter.

2. If the inclusionary rate calculation results in a fraction of a dwelling unit or room, the number of whole units or rooms shall be provided, and a proportionate share of the housing fee described in Section 17.136.040 shall be paid for the fraction.
3. Where a project subject to the inclusionary requirements of this Section would replace existing residential or non-residential uses on the project site, the project shall only be required to mitigate the incremental new demand of the proposed project. Credit for existing uses shall be calculated as follows:
 - a. An existing hotel room shall equate to one half of a residential unit.
 - b. Each 900 gross square feet of existing commercial (retail, restaurant, office) or industrial development shall equate to one residential unit.
 - c. Where the existing development consists of a mixture of uses, the calculation of credit for existing uses shall be determined by the Director, based on the factors listed in a) and b), above.
4. If the inclusionary rate calculation results in a fraction of a dwelling unit, the number of whole units shall be provided as BMR units, and a proportionate share of the housing fee described in Section 17.136.040 shall be paid for the fraction.
5. If a change in the project design prior to issuance of a building permit results in a change in the total number of BMR units required pursuant to the inclusionary requirement the number of units required shall be recalculated based on the total number of units in the final approved project.

B. Inclusionary Requirement Established by Resolution. The required inclusionary rate, and target AMI for eligible households shall be established by Council resolution, and periodically reviewed and updated.

C. Calculation of Project Density.

1. Below Market Rate units required pursuant to this section shall not count towards the calculation of total project density/intensity if all of the following conditions apply:
 - a. All of the required BMR units for the project are provided on site;
 - b. The project is located in the Downtown, Old Mammoth Road, Mixed Lodging/Residential, or Residential Multi-Family 2 Zones, or in an area subject to a specific plan or master plan that permits such an exclusion;

- c. The project has not applied for or received a State housing density bonus pursuant to Chapter 17.140; and
 - d. Findings can be made in conjunction with project approval that the total project density or intensity, considering all uses, would meet all applicable design and development standards of the Municipal Code, would not result in significant and unavoidable environmental impacts, and would be compatible with surrounding uses.
2. In all other cases, total project density or intensity, inclusive of required BMR units, shall not exceed the maximum density for the zone in which the project is located, except as permitted by the provisions of Chapter 17.140 (Affordable Housing Density Bonuses and Incentives).

D. Housing Mitigation Plan. All projects subject to the provisions of this section shall be required to submit, at the time of submittal of the development application, a Housing Mitigation Plan (HMP). Prior to submitting a HMP, the applicant should hold preliminary consultations with the Director to provide the applicant information and guidance. The HMP shall include, at a minimum, the following information:

1. A calculation of the housing mitigation requirements generated by the project, as defined herein.
2. A description of the method by which the housing mitigation requirement is proposed to be satisfied, as follows:
 - a. Identification of the location within the project of the BMR units.
 - b. A description and floor plan of the proposed units including habitable square footage, number of bedrooms, living areas, and proposed resident amenities. Such information shall be provided in sufficient detail so as to permit an evaluation of the units' conformance with the livability and design criteria set forth in Section 17.136.090.
 - c. The proposed timeframe for development of the required units, including number of units to be provided within each phase of multi-phase projects.
 - d. The proposed sales price, or rental price if applicable (refer to Section 17.136.060), and calculation method or basis for establishing such price).
3. If an alternate method is proposed by the developer to satisfy the mitigation requirements, the submittal shall conform with all requirements set forth in Section 17.136.070 (Alternate Housing Mitigation Plan).

17.136.030 - Housing Mitigation Requirements for Other Project Types

New commercial and industrial development, for-sale residential projects of nine or fewer units, lodging projects, expansion or additions to existing uses, and conversion of uses from one type to another, that are not otherwise subject to Section 17.136.020 or exempt pursuant to Section 17.136.050, shall be required to pay an affordable housing mitigation fee (“housing fee”), in accordance with the following and with Section 17.136.040.

A. Calculation of Housing Fee.

1. The housing fee applicable to each use shall be established by resolution of the Council, in accordance with the provisions of Section 17.136.040.
2. The Director shall determine the appropriate category for the development, and shall calculate the amount of the housing fee based on the adopted fee schedule, based on the provisions herein.
3. Housing fees shall be calculated as follows:

- a. Nonresidential developments that include new construction or addition to existing nonresidential space:

Housing fee = (gross square feet of new nonresidential space) X (applicable fee by type of use)

- b. Residential developments that include additions of new gross square feet of habitable space:

Housing fee = (gross square feet of new habitable residential space) X (applicable fee)

- c. New residential developments:

Housing fee = (number of new units) X (applicable housing fee for new use)

- d. New lodging developments:

Housing fee = (number of new rooms) X (applicable housing fee for new use)

- e. Conversion of one non-residential use, without addition of new space, to another non-residential use:

Housing fee = (gross square feet) X (applicable housing fee for new use) – (gross square feet) X (applicable housing fee for prior use).

- f. Conversion from a residential use to a non-residential use:

Housing fee = (gross square feet of new non-residential use) X (applicable housing fee) – (number of prior residential units) X (applicable housing fee)

- g. Conversion from a lodging use to a non-residential use:

Housing fee = (gross square feet of new non-residential use) X (applicable housing fee) – (number of prior lodging units) X (applicable housing fee)

4. The land use category for a development shall be determined by the Director based on an individualized determination only if:
- The adopted fee schedule so specifies; or
 - The Director determines that insufficient generalized information is available to permit a determination that the use falls within one of the specified use categories.

Any application for a non-residential project where an individualized fee determination is required pursuant to this Section shall be accompanied by information sufficient to enable the Director to make a determination of employee density. The determination of employee density shall be based on: data concerning anticipated employee density for the project submitted by the applicant; employment surveys or other research on similar uses submitted by the applicant or independently researched by the Director; or any other data or information the Director determines relevant. Based on the evidence submitted, the Director shall determine the most similar land use category, or shall establish a mixed fee, as appropriate.

5. An applicant may appeal the Director's fee determination to the Council according to provisions of Chapter 17.104 (Appeals) of the Municipal Code.

B. Refund or Rebate of Housing Fees Based on Conversion or Replacement of Use. No refund or rebate of housing fees previously paid shall be made in the case of conversion from one use with a higher housing fee to one with a lesser housing fee, or conversion from a non-exempt to an exempt use.

C. Alternatives to Payment of Housing Fee. As an alternative to payment of the housing fee set forth in this Section, an applicant may submit a request to mitigate the affordable housing impacts of such development through the construction of affordable units, either on-site or off-site, through the dedication of land, or other means, consistent with the provisions of Section 17.136.060.

17.136.040 - Housing Impact Mitigation Fees**A. Housing Fees Established.**

1. All housing fees shall be established by resolution of the Town Council. Such fees shall not exceed the cost of mitigating the impact of market-rate residential and non-residential projects on the need for affordable and workforce housing in the town, based on an approved nexus study.
2. Housing fees shall be established per unit for for-sale transient and non-transient residential uses, per room for lodging uses, and per gross square foot for at least the following categories of other uses: office, retail, restaurant, industrial and residential additions.

B. Review and Update. The Town Council shall periodically review the housing fees for various land uses including residential, lodging and non-residential developments and adjust the fees by resolution. At a minimum the housing fees shall be reviewed and, if appropriate, revised at the time of each housing element update. The Town Manager shall prepare a recommendation to the Council for such fee revision.

C. Use of Housing Fees. Fees collected pursuant to this chapter shall be placed in a separate fund of the Town and shall be used only for the purposes of planning for, administering, subsidizing or developing affordable or workforce housing.

17.136.050 - Exemptions from Housing Mitigation Requirements

The following development types are exempt from the housing mitigation requirements set forth in this chapter, including inclusionary provisions and housing impact mitigation fees:

- A.** Any non-residential development where it can be determined, by the Director, that the project would not contribute new demand for employment or housing within the community (e.g. replacement of an existing use or facility).
- B.** New single family residences with habitable space of 2,500 square feet or less, in the Residential Single Family, Rural Residential, and Residential Multi Family-1 zones.
- C.** Additions to, or remodels of, single-family residences in the Residential Single Family, Rural Residential, and Residential Multi Family-1 zones, that would not cause total habitable space to exceed 2,500 square feet; or for residences with over 2,500 square feet of habitable space, that would add less than 400 square feet in aggregate per building. Fees shall only be charged for the incremental square footage addition above the 400 square foot exemption.
- D.** Multi-family projects of four or fewer units in the Residential Multi-Family 1 zone, where the average habitable area per unit would not exceed 1,300 square feet.
- E.** Live-work units.

- F. Legally-permitted secondary residential units.
- G. Non-transient market-rate rental apartments and deed restricted rental or for-sale units in any zone.
- H. Ground-floor retail and restaurant uses included as part of a mixed-use project, where the commercial component would be located within the same building or on the same parcel as residential or lodging uses, within the Downtown, Old Mammoth Road, Mixed Lodging/Residential, and Resort zones, or within a specific plan or master plan area.
- I. Any development operated by a non-profit or social services organization to provide food storage, meal service and/or temporary shelter to the homeless.
- J. Residential care and assisted living facilities.
- K. Any non-residential development involving no more than one total employee.

17.136.060 - Residential Projects: Rental permitted if consistent with Costa Hawkins Act

- A. **Rental Housing Alternative.** As an alternative to providing affordable ownership units on-site as required by Section 17.136.020, or paying housing fees pursuant to Section 17.136.030, an applicant may propose to provide a proportion of the total units or bedrooms as below market-rate rental units restricted to occupancy by households at the target proportion of AMI. The proportion and target AMI shall be established by Council Resolution as specified in Section 17.136.040. To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the Town may only approve such a proposal if the applicant agrees in a rent regulatory agreement with the Town to limit rents in consideration for a direct financial contribution or a form of assistance specified in Section 65915 of the Government Code (State Density Bonus Law).
- B. **Rental Regulatory Agreement Provisions.** The rent regulatory agreement with the Town shall include provisions for sale of affordable units and relocation benefits for tenants of the affordable units if the owner of the residential project later determines to offer any affordable units in the residential project for sale. If dwelling units in the residential project are later sold, the applicant shall provide as many ownership affordable units at an affordable sales price as required by Section 17.136.020, or payment of the specified in-lieu fees described in Section 17.136.030, as applicable. Continued affordability of such units shall be assured through deed restrictions or other document acceptable to the Director, and include all other relevant requirements as noted in Section 17.136.100.

17.136.070 - Alternate Housing Mitigation Plan

Projects that are required to provide inclusionary housing units on-site, or to pay housing fees may propose an Alternate Housing Mitigation Plan (AHMP) subject to approval by the Town, based on the following provisions:

- A. Application.** An AHMP shall be submitted at time of the application for first approval associated with the project. The application shall include:
1. A calculation of the housing mitigation requirements generated by the project, as defined herein.
 2. A description of the method by which the housing mitigation requirement is to be satisfied pursuant to Subsection C, including applicable information specified therein.
 3. An analysis of conformance with the criteria outlined in Subsection D.
 4. Any other information determined relevant to the application by the Director.
- B. Early Consultation.** Prior to submitting an application for an AHMP, the applicant should hold preliminary consultations with the Director to provide the applicant information and guidance.
- C. Alternate Mitigation Methods.** Alternate housing mitigation proposals may include, but are not limited to, strategies in the following list. Approval of any proposed strategy will be at the sole discretion of the Town, subject to any specific criteria included in the numbered items below.
1. **Off-site Provision of Units.** Below market-rate units may be proposed off-site within the Town limits in lieu of on site construction. Off-site below market-rate units may include any combination of new dwelling units, new dwelling units created in existing structures, or conversion of existing market-rate to BMR units. Provision of such units shall be subject to the following criteria:
 - a. For new construction of off-site units, such units shall be within the Downtown, Old Mammoth Road, Mixed Lodging and Residential, Residential Multi-Family 2, Resort, or Specific Plan Zones.
 - b. Units acquired shall not be currently serving as long-term (i.e. non-transient) rental units.
 - c. If the off-site BMR units will not be constructed or otherwise secured concurrently with the market-rate units, the builder shall specify the security to be provided to the Town to ensure the timely construction or acquisition of said units, including evidence of ownership, control or other legally-binding commitment to required sites, and evidence that funding has

been secured for the off-site units. Such security shall be provided prior to issuance of any certificates of occupancy for the market-rate units.

- d. The proposed off-site units shall be located in an area where the need for, or benefit of, those units is determined to be greater than similar units provided on-site.
- e. The proposed off-site units shall meet or exceed the livability and design standards described in Section 17.136.090.
- f. In addition to compliance with a. through e., above, the off-site units shall meet at least one of the two following criteria:
 - i. The provision of units off-site will result in a minimum of ten percent more total BMR units with the same or more habitable area and bedrooms than would have been provided on-site.
 - ii. The off-site BMR units will provide a level of affordability at least ten percentage points lower than the target AMI required for on-site inclusionary units. E.g., if the target AMI for on-site inclusionary units is 80%, the off-site housing provided would be targeted for households making 70% AMI or less.

2. **Donation of Land.** The inclusionary housing requirement of Section 17.136.020 may be satisfied by the dedication of land in-lieu of constructing BMR units on-site, if it can be determined by the Town that all of the following criteria have been met:

- a. Marketable title to the site is transferred to the Town, or an affordable housing developer or non-profit approved by the Town, no later than the approval of a final map or issuance of first building permit, pursuant to an agreement between the developer and the Town, and such agreement is in the best interest of the Town.
- b. The site has a General Plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least the number of required BMR units within the residential or lodging development, and conforms to applicable Town development standards.
- c. The site is suitable for development of the BMR units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition or location of the site.
- d. Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be available at the property line and have

adequate capacity to serve the maximum allowable residential development pursuant to zoning regulations.

- e. Environmental review of the proposed site has been completed for the proposed site, including analysis of the site for the presence of hazardous materials and geological review for the presence of geologic hazards and that such hazards are or will be mitigated to the satisfaction of the Town prior to acceptance of the site by the Town.
- f. The value of the site upon the date of dedication is equal to or greater than the housing fee in effect at the date of dedication multiplied by the number of otherwise required BMR units within the market-rate residential development.

The Town shall not be required to construct BMR units on the site dedicated to the Town, but may sell, transfer, lease or otherwise dispose of the dedicated site in order to facilitate the construction of those units. Any funds collected as a result of sale, transfer, lease or other disposition of sites dedicated to the Town shall be deposited into the Town's Housing Mitigation Fund and the funds and interest accrued shall remain in the fund and shall be used only for the purposes of planning for, administering, subsidizing, or developing affordable housing.

- 3. **Increase in BMR unit size and total number of bedrooms.** The builder or developer may propose a plan that provides larger BMR units and increases the total number of bedrooms that would have otherwise been provided under this Chapter, even if fewer total units are produced.
 - 4. **Provision of units at a greater level of affordability.** The builder or developer may propose a greater level of affordability than that specified in Section 17.136.020, and a commensurate reduction in the total number of units or bedrooms otherwise required.
 - 5. **Payment of Fees.** Payment of an in-lieu housing fee may be accepted in-lieu of on-site mitigation. The in-lieu fee shall be established by the Town based on the costs to provide (construct, acquire, or otherwise secure) similar BMR units for households at the target AMI.
- D. Approval.** The decision-making body for the “first approval” may approve, conditionally approve, or reject any alternative proposed by a builder/developer as part of an AHMP. Approval or conditional approval shall be based on the following findings:
- 1. On-site mitigation is less desirable for the community than the proposed alternative or infeasible. Cost to the developer shall not be considered alone as a sufficient criteria to determine that provision of on-site BMR units is infeasible.

2. There would be substantial additional affordable housing benefit derived from the alternate proposal, as determined by the City in its sole discretion and based on applicable standards included in Subsection C, above.

17.136.080 - Time Performance Required.

- A. No certificate of occupancy shall be issued for any project subject to the requirements of this Chapter until the permittee has either:
 1. Obtained permits for affordable units in the for-sale project sufficient to meet the requirements of Section 17.136.020;
 2. Paid the housing fee as specified in Section 17.136.030; or
 3. Received certification from the Director that the permittee has met, or made arrangements satisfactory to the Town to meet, an alternative requirement as specified in Section 17.136.070.
- B. No final inspection for occupancy for any market-rate unit in a for-sale project shall be completed until the permittee has either constructed the BMR units required by Section 17.136.020, or completed corresponding alternative performance under 17.136.070.
- C. To accommodate phasing schedules, model variations or other factors in a project, the Director may modify the timing requirements for construction and occupancy of market rate units if the Town determines this will provide greater public benefit, and if a Housing Mitigation Plan or Alternate Housing Mitigation Plan so provides.

17.136.090 - Livability Standards.

The following Housing Livability Standards shall apply to all BMR units developed pursuant to the requirements of the Municipal Code. The intent of these requirements is to ensure that developers of BMR units build units that meet minimum standards of square footage and amenities necessary for households living and working in Mammoth Lakes, and are functionally equivalent to associated market-rate units:

- A. **Distribution of Units.** Required BMR units shall be distributed throughout the project to the extent feasible, and, where units at multiple levels of affordability are proposed, such units shall also be distributed both throughout the project and in relationship to one another.
- B. **Comparable Size of Units.** The average unit size, and number of bedrooms and bathrooms provided among the BMR units shall be comparable to the average among the market rate units in the project.
- C. **Minimum Square Footage.** BMR units shall meet the following minimum square footage requirements, exclusive of garages, decks and balconies, as follows:

1. A studio unit shall be no less than 500 square feet
2. A one (1) bedroom unit shall be no less than 750 square feet
3. A two (2) bedroom unit shall be no less than 1,000 square feet
4. A three (3) bedroom unit shall be no less than 1,300 square feet
5. A four (4) bedroom unit shall be no less than 1,600 square feet

D. Amenities and Design Standards.

1. Appliances and Fixtures
 - a. Each kitchen in a BMR unit shall provide, at a minimum, a range (cooktop and oven) and refrigerator. If provided in market-rate units, a dishwasher and garbage disposal shall also be provided in the workforce unit.
 - b. All units shall have provisions for laundry, either in-unit or via access to a shared laundry facility. If washers/dryers are provided for market-rate units then washer/dryers shall be provided in the BMR units.
 - c. Appliances and fixtures including those listed above, water heaters, furnaces, toilets, sinks etc. shall be Energy Star or WaterSense (or similar equivalent standard) rated, as applicable.
 - d. Materials and appliances shall have a minimum one year warranty.
2. Adequate cabinets and storage space shall be provided for kitchen, linens, bathrooms, and outdoor equipment (e.g. bicycles and skis). Storage space shall be located and designed to serve its intended purpose. A minimum of 100 cubic feet of lockable storage shall be provided per unit for multi-family residential projects.
3. Sound insulation shall be provided within both the interior and exterior walls, sufficient to meet established interior noise standards.
4. A dining area shall be provided, which may be a separate room, part of a combined living/dining area, or within the kitchen.
5. Bedrooms shall accommodate a minimum of two persons and have at least 120 square feet of useful space in addition to adequate closet space. A bedroom designated as a master bedroom shall be larger than the secondary bedrooms.
6. An adequate number of bathrooms for the expected household size, based on number of bedrooms shall be provided. Three and four bedroom units must have at least two full bathrooms. Other unit types (studio, one-bedroom and two-bedroom units) shall have the same number of bathrooms in proportion to bedrooms, on average as the market rate units.

7. The external appearance, finishing materials, and quality of construction of the BMR units and any landscaping, private yards or open space that is part of the BMR unit property shall be identical to the market rate units in the project.
8. Project amenities generally available to residents of the market-rate units and parking (except as specified in Chapter 17.140) shall be available on the same basis to the BMR units as to the market-rate units. Reasonably-equivalent amenities or facilities for the exclusive use of the affordable/workforce housing residents may be provided in lieu of the market-rate units' facilities, provided it can be shown that these more closely meet the needs of the households expected to occupy the BMR units.
9. Convenient access to private or common outdoor space that is provided in conformance with Section 17.52.190.C (Common Recreation Area) shall be provided from each unit.

E. Request for Waiver or Modification of Livability Standards.

1. A developer may submit a request for a waiver or modification of one or more of the standards listed in Subsection D, above, based on site- or project-specific conditions that would make strict compliance with that standard infeasible or impractical. Agreement to any such concession shall be made at the discretion of the Review Authority.
2. In the case of off-site units provided through acquisition and rehabilitation of existing unit(s), particularly when such units are located within an existing larger development of market rate units, strict adherence to standards for interior room size and configuration, noise insulation, number of bathrooms, and common areas used by all residents of the project shall only be required to the extent feasible based on the existing characteristics and location of the unit being acquired. Such a determination shall be made by the Director.

17.136.100 - Eligibility, Continued Affordability

A. Eligibility for Below Market Rate Units (owner-occupied and rental units)

1. No household shall be permitted to occupy a BMR unit, or to purchase a BMR unit for owner occupancy, unless the Town or its designee has approved the household's eligibility. If the Town or its designee maintains a list of eligible households, households selected to occupy such units shall be first selected from that list to the extent provided in the affordable housing agreement, rent regulatory agreement, or resale restrictions.
2. Any household which occupies a rental BMR unit or purchases a BMR unit shall occupy that unit as its principal residence and shall not lease or sublease to a different party.

- B. Continued Affordability Requirements (owner-occupied and rental units).** Prior to the issuance of certificates of occupancy for BMR units provided in accordance with this Chapter, resale restrictions, deeds of trust, rent regulatory agreements and/or other documents, as appropriate, all of which must be acceptable to the Director and Town Attorney and consistent with the requirements of this chapter, shall be recorded against parcels or units having such BMR units and shall ensure that each BMR unit remains affordable to the same income level for a minimum of 30 years.

At a minimum agreements provided in accordance with this Section shall provide:

1. A provision to provide the Town or its qualified designee the continuing right-of-first-refusal to purchase or lease any or all of the designated dwelling units at the appraised value of the unit subject to the resale restriction;
2. A covenant stating that the developer or successors-in-interest shall not assign, lease, rent, sell, sublet, or otherwise transfer any interests for the designated units without the written approval of the Town or its designee;
3. That the Town or its designee shall have the authority to enter into other agreements with the developer, or purchasers of the designated dwelling units, to ensure that the required dwelling units are continuously occupied by eligible households for the agreed to affordability period;
4. Provisions, in a form satisfactory to the Town, for the enforcement of owner or developer compliance. Any default or failure to comply may result in foreclosure, specific performance, or withdrawal of the certificate of occupancy;
5. That in any action taken to enforce compliance with the deed restrictions, the Town Attorney shall, if compliance is ordered by a court of competent jurisdiction, take all action that may be allowed by law to recover all of the Town's costs of action including legal services; and
6. That compliance with the agreement will be monitored and enforced in compliance with the measures included in the agreement.

- C. Initial and Continued Affordability: Owner-Occupied Units.** In addition to the minimum requirements set forth in Subsection B, the developer shall agree to the following measures to assure the initial and on-going affordability of required BMR units:

1. **Initial Sales Price.** The initial sales price of a for-sale BMR unit shall be set by the Town or its designee at the time a building permit is issued for the unit, so that the eligible household will pay an affordable ownership cost. The initial sales price shall be based on the developer's estimate of homeowners association dues, if any, the Town's assumptions for interest rates and other factors, and the formula for calculating sales prices contained in the approved Housing Mitigation Plan or Alternate Housing Mitigation Plan. The Town shall provide the developer

with an estimate of the initial sales price for the BMR units at an earlier date if so requested by the developer in writing. After the building permit is issued, the initial sales price may be adjusted by the Town, due to changes in market factors upon written request by the developer no less than 90 days prior to marketing of the BMR units.

2. **Resale Restrictions.** Documents to assure continued affordability shall be recorded against the property in accordance with the provisions of Subsections A and B, above, and the following concerning resale restrictions:
 - a. Terms and conditions concerning the resale of the units shall be specified as necessary to ensure their continuing affordability. Such requirements may include, but are not limited to:
 - i. Limits on resale price, based on an appropriate calculation method.
 - ii. Provisions offering units for resale to the Town or its designee, and/or which limit resale to households determined to be eligible for affordable units by the Town in compliance with this Section.
 - iii. Monitoring requirements for resale of units, including required notice of intent to sell in a timely manner before the unit is intended to be marketed.
 - iv. Provisions concerning release of applicable restrictions, should market conditions dictate that the market-rate value of the property is below the designated affordability level in the initial agreement.

D. **Initial and Continued Affordability: Rental Units**

1. **Initial Rents for Below-Market Rate Units.** The initial rent of BMR units shall be set by the Town or its designee at least 30 days prior to the marketing of the BMR unit, so that the eligible households will pay an affordable rental cost in accordance with the established affordability level. The initial rent shall be based on the Town's assumptions for utility costs and the formula for calculating rents contained in the approved Housing Mitigation Plan or Alternate Housing Mitigation Plan. The Town shall provide the developer with an estimate of the initial rent for the BMR units at an earlier date upon written request.
2. **Rent Regulatory Agreement.** A rent regulatory agreement acceptable to the Town shall be recorded against the residential development prior to issuance of certificate of occupancy. Such an agreement shall reflect the limitations on rents required by this Chapter, the provisions of Subsection A, above, and the minimum requirements outlined in Subsection D, below, and the following:
 - a. **Nondiscrimination.** When selecting tenants, the owners of BMR units shall follow all fair-housing laws, rules, regulations and guidelines. The

owner shall apply the same rental terms and conditions to tenants of BMR units as are applied to all other tenants, except as required to comply with this chapter (for example, rent levels and income requirements) or with other applicable government subsidy programs.

- b. **Move-in Costs.** Total deposits, including security deposits, required of households occupying a BMR unit shall be limited to first and last month's rent plus a cleaning deposit not to exceed one month's rent.
- c. **Reporting Requirements.** The owner (or their designated agent) shall be required to submit an annual report summarizing the occupancy of each BMR unit for the year, demonstrating the continuing eligibility of each tenant, and the rent charged for each market rate unit. The Town may require additional information to confirm household income and rents charged for the unit if it determines necessary.

The Town shall maintain the right to periodically audit the information supplied to the Town for the annual report if deemed necessary to ensure compliance with this Chapter.

- d. The owners of any BMR unit shall agree to cooperate with any audit or reporting requirements conducted by the Town, State agencies, federal agencies, or their designees.
- e. Provisions concerning changes in tenant income, where, after moving into a unit a tenant's household income would exceed the specified limit for that unit.