TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER

DEPARTMENT: PLANNING AND COMMUNITY ENVIRONMENT

DATE: MARCH 10, 2008

CMR: 161:08

SUBJECT: ADOPTION OF AN ORDINANCE ADDING CHAPTER 18.14 (“BELOW MARKET RATE HOUSING PROGRAM”) TO TITLE 18 (“ZONING”) OF THE PALO ALTO MUNICIPAL CODE

RECOMMENDATION

Staff recommends that the City Council adopt the attached ordinance to incorporate the existing Below Market Rate (BMR) requirements, policies and procedures as stated in Program H-36 of the Housing Element of the Comprehensive Plan into a new Chapter 18.14 (“Below Market Rate Housing Program”) of the Zoning Ordinance (Title 18 of the Palo Alto Municipal Code).

BACKGROUND

Council first adopted a BMR inclusionary housing policy in 1974 as part of the Housing Element of the Comprehensive Plan. Palo Alto’s program has been successful by adding 179 owner units and 155 rental units to the inventory. In addition, there are another 145 new owner and rental units to be added to the Program that have recently sold, are under construction or have requisite planning approvals. Since its inception, the BMR program has been governed by a short, two-page description in the Housing Element of the Comprehensive Plan (Attachment B is the text of the current Program H-36 which was adopted in 2002 with the last Housing Element revision.)

DISCUSSION

Increasingly, it has become the norm for communities to adopt an ordinance to govern their inclusionary housing programs. While the BMR program is still operating effectively, the need for codifying the program within the Zoning Ordinance has become more important as the program grows in size and matures. By adopting this ordinance, the City will assist housing developers and other interested parties in determining the City’s affordable housing requirements as they apply to residential development. The legal basis of the program will be more clearly defined with the adoption of the statements of findings and purposes contained in the proposed ordinance, which will also improve developer understanding of the program and assist in enforcement.

Section 18.14.030 of the draft ordinance provides a very brief overview of the BMR requirements excerpted from Program H-36. The Housing Element Program H-36 text is not being revised or amended by adoption of this ordinance. A developer seeking to determine how the BMR requirements apply to a proposed housing project will still need to consult Program H-36 and other...
policy memoranda (these are available on the City’s web site or from staff). Developers will need to continue to discuss their projects with Planning staff in order to obtain a complete understanding of the application of the program to their particular project.

Another important function of the ordinance is to clarify that Council has delegated to the City Manager the authority and responsibility for the preparation, approval and revision, from time to time, of administrative policies, rules and procedures for the administration and operations of the program by both City staff and contract administrators, including the work carried out by the PAHC Housing Services, LLC (PAHC). The BMR policy and procedures manual covers both tasks administered by City staff, such as negotiations with developers; and aspects of the program managed by PAHC, such as the waiting list, the sales of new and existing units, transfers of title, refinancing, temporary rental and similar matters.

**Relationship to BMR Update Study:** Recommendations related to the BMR Update Study from the Policy and Services Committee (September 11, 2007) and the Planning and Transportation Commission (October 10, 2007), together with further staff analysis of key policy issues, is tentatively scheduled for Council review on April 7, 2008. Once Council has provided policy direction on changes to the BMR program, implementing amendments and revisions to the Housing Element Program H-36 text and to the Chapter 18.14 ordinance will need to be prepared for adoption. Ultimately, the Housing Element program will become a statement of broader program purposes and objectives with the ordinance containing specific developer requirements and affordability standards for owner and rental units.

**RESOURCE IMPACT**
There are no resource impacts related to the adoption of this ordinance. Funds are available within the Residential Housing Fund for the cost of contract legal services which will be necessary to assist staff with the drafting of a comprehensive BMR ordinance and with the preparation of new BMR ownership deed restrictions and related enforcement documents.

**TIMELINE**
The adoption of the attached ordinance is just one task that is part of a multi-year work program to update the City’s thirty-four year old BMR program. Recent and planned public meetings and milestones in this work program are listed below:

- **June 2003:** Council approved consultant contract with Keyser Marston Associates, Inc. and Anderson and Associates and funding for contract staff for the update work
- **March 2007:** Completion of consultant report by September 11, 2007: Policy and Services Committee reviewed policy recommendations resulting from the BMR study
- **October 10, 2007:** PTC reviewed policy recommendations from the BMR study
- **March 10, 2008:** City Council reviews interim BMR ordinance to codify existing program policies and procedures
- **April 7, 2008:** City Council reviews policy recommendations for revisions to the BMR program resulting from the BMR study and provides direction to staff
- **April – July 2008:** Staff drafts amendments to the BMR ordinance and additional revisions to the Program H-36 text
- **July 2008:** City Council adopts amendments to the BMR Ordinance and related Housing
Element Program H-36 amendments
• December 2008: City Attorney completes new legal documents (deed restrictions, deed of trust) and revisions are completed by Planning & PAHC to the Policy and Procedures Manual

POLICY IMPLICATIONS
The attached draft ordinance does not amend the adopted BMR program of the Housing Element of the Comprehensive Plan and does not propose new BMR program requirements or any new policies. The purpose of the ordinance is only to codify the current BMR program as stated in Program H-36 of the Housing Element as adopted by Council on December 2, 2002.

ENVIRONMENTAL REVIEW
Adoption of this ordinance implements Program H-37 of the Housing Element which states: “Adopt an ordinance codifying and implementing the City’s Below Market Rate (BMR) Program.” The draft ordinance codifies existing policies and program rules and is consistent with the policies and programs of the Comprehensive Plan and with the Comprehensive Plan EIR.

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DEPARTMENT HEAD REVIEW: STEVE EMSLIE
Director of Planning and Community Environment

CITY MANAGER APPROVAL: EMILY HARRISON
Assistant City Manager

ATTACHMENTS
A. Draft Ordinance Adding Chapter 18.14 (“Below Market Rate Housing Program”) to Title 18 (“Zoning”) of the Palo Alto Municipal Code
B. Program H-36 (BMR Program) of the Housing Element of the Comprehensive Plan (Adopted on December 2, 2002).

CC: Palo Alto Housing Corporation, Marlene Prendergast, Executive Director
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