ORDINANCE NO._____
ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO
ADDED TO TITLE 18 ("ZONING") OF THE PALO ALTO
MUNICIPAL CODE

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Chapter 18.14 ("Below Market Rate Housing Program") of Title 18 ("Zoning") of the Palo Alto Municipal Code is hereby added to read as follows:

"18.14 Below Market Rate Housing Program"

18.14.010 Findings

In enacting this ordinance, the City finds as follows:

(a) Rental and owner-occupied housing in the City has become steadily more expensive. Housing costs have gone up faster than incomes for many groups in the community.

(b) Many persons who work in the City, who have grown up or have family ties in the City, who already live in the City but may be forced to move due to the cost of housing, or who wish to live in the City for other reasons, cannot afford housing in the City.

(c) Federal and state government programs do not provide nearly enough affordable housing or subsidies to satisfy the housing needs of moderate, low or very low income households.

(d) Rising land prices have been a key factor in preventing development of new affordable housing. New housing construction in the City which does not include affordable units aggravates the existing shortage of affordable housing by absorbing the supply of available residential land. This reduces the supply of land for affordable housing and increases the price of remaining residential land. At the same time new housing contributes to the demand for goods and services in the City, increasing local service employment at wage levels which often do not permit employees to afford housing in the City. Providing the affordable units required by this article will help to insure that part of the City's remaining developable land is used to provide affordable housing.

(e) The City wishes to retain an economically balanced community, with housing available to very low income, low income and moderate income households. The City's Comprehensive Plan implements the established policy of the State of California that each community should foster an adequate supply of housing for persons at all economic levels.

(f) An economically balanced community is only possible if part of the new housing built in the City is affordable to households with limited incomes. Requiring builders of new
housing to include some housing affordable to households at a range of incomes is fair, not only because new development without affordable units contributes to the shortage of affordable housing but also because zoning and other ordinances concerning new housing in the City should be consistent with the community's goal to foster an adequate supply of housing for persons at all economic levels.

(g) In general, the provision of affordable units within each housing development serves the goal of creating an economically balanced community. Payment of in-lieu fees or construction of required units off-site may be appropriate in some cases at the discretion of the City, but should be allowed only where a project sponsor demonstrates satisfaction of the criteria set forth in this article.

18.14.020 Purpose

The purpose of this Chapter is to:

(a) Encourage the development and availability of housing affordable to a broad range of households with varying income levels within the City as mandated by State Law, California Government Code Sections 65580 and the Palo Alto Comprehensive Plan.

(b) Promote the City's goal to add affordable housing units to the City's housing stock in proportion to the overall increase in new jobs and housing units.

(c) Offset the demand on housing that is created by new development.

(d) Mitigate environmental and other impacts that accompany new residential and commercial development by protecting the economic diversity of the City's housing stock, with the goal of reducing traffic, transit and related air quality impacts, promoting jobs/housing balance and reducing the demands placed on transportation infrastructure in the region.

(e) To increase the supply of for-sale and rental housing for families and individuals employed in Palo Alto whose incomes are insufficient to afford market rate housing. Since the current historical rate of production of affordable housing in the City is very low, the BMR program is essential to meet the City's need for affordable housing.

18.14.030 Below Market Rate Housing Program Requirements

(a) Developers of projects with five or more units must comply with the requirements set forth in Program H-36 of the City of Palo Alto Comprehensive Plan. The BMR Program objective is to obtain actual housing units or buildable parcels within each development rather than off-site units or in-lieu payments.

(b) If the City determines that on-site BMR units are not feasible, off-site units acceptable to the City, or vacant land determined to be suitable for affordable housing construction, may be provided instead. Off-site units should normally be new units, but the City
may accept rehabilitated existing units when significant improvement in the City’s housing stock is demonstrated.

(c) If the City determines that no other alternative is feasible, a cash payment to the City’s Housing Development Fund, in lieu of providing BMR units or land, may be accepted. The in-lieu payment for projects subject to the basic 15 percent BMR requirement shall be 7.5 percent of the greater of the actual sales price or fair market value of each unit.

18.14.040 BMR Program Administration

(a) The city manager shall adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out the administration of the BMR Program and preventing abuse of the BMR Program by those capable of affording market rate housing. Such rules and regulations shall address, but not be limited to, program eligibility requirements, preferences for housing applicants currently living or working in the City of Palo Alto, minimum occupancy limits, waiting list procedures, buyer selection procedures, methodology for the calculation of initial sales prices for ownership units and initial rents for rental BMR units, resale restrictions and reasonable accommodations for applicants with medically verifiable disabilities. A copy of such policies, rules and regulations shall be on file and available for public examination in the office of the city clerk.

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(b) Failure or refusal to comply with any such rules, regulations or agreements promulgated under this section shall be deemed a violation of this chapter.

SECTION 2. This ordinance shall be effective on the thirty-first day after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

__________________________________________  ______________________________________
City Clerk                                                   Mayor

APPROVED AS TO FORM:

__________________________________________  ______________________________________
Assistant City Attorney                          City Manager

__________________________________________  ______________________________________
                                  Director of Planning and Community Environment

__________________________________________  ______________________________________
                                  Director of Administrative Services
The Palo Alto Below Market Rate ("BMR") Housing Program
Program H-36 of the Housing Element of the City of Palo Alto [Page 23]
Adopted December 2, 2002; Certified by the State on May 23, 2003
Chapter 4 of the Comprehensive Plan

Program H-36:

Implement the City’s “Below Market Rate" (BMR) Program by requiring that at least 15 percent of all housing units in projects of five units or more, be provided at below market rates to very low-, low-, and moderate-income households. Projects on sites of five acres or larger must set aside 20 percent of all units as BMR units.

The City of Palo Alto’s BMR program is intended to increase the supply of for-sale housing and rental housing for individuals and families whose incomes are insufficient to afford market rate housing. Since the program was initiated in 1974, 152 for-sale units and 101 rental units have been created. Continued affordability of the units is a major goal of the program. Deed restrictions control the resale price and limit rent increases. Occupancy for BMR units is determined according to City Council guidelines. The Palo Alto Housing Corporation, under contract to the City, has administered the program since its inception. Since the current rates of production of affordable housing in Palo Alto are very low, the BMR program requirement is essential to meet the City’s need for affordable housing.

Developers of projects with five or more housing units must comply with Palo Alto’s BMR requirements. The BMR program objective is to obtain actual housing units or buildable parcels within each development rather than off-site units or in-lieu payments. At least 15 percent of the housing units developed in a project involving fewer than five acres of land must be provided as BMR units. Projects involving the development of five or more acres must provide at least 20 percent of all units developed as BMR units. (Projects that cause the loss of existing rental housing may need to provide a 25 percent BMR component, see Program H-29.) The BMR units must be comparable to other units in the development. For an application to be determined complete, the developer must agree to one or a combination of the following requirements or equivalent alternatives that are acceptable to the City

For-Sale Units:
For projects with a 15 percent BMR component, the initial sales price for at least two-thirds of the BMR units must be affordable to a household making between 80 to 100 percent of the Santa Clara County median income, taking into consideration all housing expenses such as mortgage payment, taxes, insurance, and association dues. The initial sales prices of the remaining BMR units may be set at higher levels affordable to households earning between 100 to 120 percent of the County’s median income. For projects with a 20 percent BMR component, three-fourths of the BMR units must be affordable to households in the 80 to 100 percent of median income range, and one-fourth may be in the higher price range of between 100 to 120 percent of the County’s median
income. For projects with a 25 percent BMR component, four-fifths of the BMR units must be affordable to households in the 80 to 100 percent of median range, and one-fifth may be in the higher price range of between 100 and 120 percent of the County’s median income. In all cases, the sales price should be sufficient to cover the estimated cost to the developer of constructing the BMR unit, including financing, but excluding land, marketing, off-site improvements, and profit.

If the City determines that on-site BMR units are not feasible, off-site units acceptable to the City, or vacant land determined to be suitable for affordable housing construction, may be provided instead. Off-site units should normally be new units, but the City may accept rehabilitated existing units when significant improvement in the City’s housing stock is demonstrated.

**In-Lieu Payments:** If the City determines that no other alternative is feasible, a cash payment to the City’s Housing Development Fund, in lieu of providing BMR units or land, may be accepted. The in-lieu payment for projects subject to the basic 15 percent BMR requirement shall be 7.5 percent of the greater of the actual sales price or fair market value of each unit. For projects subject to the 20 percent requirement, the rate is 10 percent; for projects with a 25 percent requirement, (as described in Program H-29 regarding the loss of rental housing), the rate is 12.5 percent.

**Rental Units:**

Developers of rental housing must provide the required percentage of BMR units at affordable rents for occupancy by very low (below 50% of the HUD median income) and low-income households (below 80% of median income). Occupancy, rents, rent increases and other provisions of the BMR rental program are governed by standards approved by the City Council and by project-specific recorded regulatory agreements. Initial rents for new BMR units are established annually by the City. After occupancy, initial rents may be adjusted annually by one-half of the Consumer Price Index Rent Residential or other comparable formula adopted by the City.

**In-Lieu Payments:** If the City determines that provision of BMR rental units on site is infeasible, it may accept a payment in lieu of such units to the City’s Housing Development Fund. The annual payment shall be the difference between the initial affordable rent and the market rate rent of each required BMR unit. If a one-time in-lieu payment is accepted in full satisfaction of the project’s BMR requirement, the payment shall be the appraised value of the housing project at market rate rents multiplied by the applicable fee rate. The fee rate is 7.5 percent for a project with a 15 percent BMR requirement, 10 percent for a project with a 20 percent BMR requirement and 12.5 percent for projects with a 25 percent BMR requirement.

**Projects with a Condominium Map That Will Be Operated as Rental Housing:**
No residential condominium map shall be approved without provision for the future sale of BMR ownership units or an equivalent alternative acceptable to the City, even though the project will be initially operated as rental housing.
Open Space (OS) District Projects:
The Open Space district sets a minimum lot size of ten acres. Projects of any acreage with fewer than 10 units or lots must provide a 15 percent BMR component. Projects with more than 10 units or lots must provide a 20 percent BMR component.

Subdivision of Land to be Sold Without Development:
Land that is subdivided into three or more lots and sold without construction of housing must transfer buildable parcel(s) equivalent to 15 percent (or other applicable BMR requirement percentage) of the development to the City or the City’s designee. The buildable parcel(s) is to be used for the purpose of developing affordable housing units. The City may sell the buildable parcel(s) with the proceeds placed in the City’s Housing Development Fund for future housing development. When the City determines that the transfer of land, or the construction of BMR units within the subdivision, is infeasible, a comparable in-lieu fee payment may be accepted by the City.

Fractional Units:
When the BMR requirement results in a fractional unit (for example: 16 units x 15% = 2.40 BMR units), an in-lieu payment to the City’s Housing Development Fund may be made for the fractional unit (the 0.4 unit) instead of providing an actual BMR unit. The in-lieu fee percentage rate shall be same as that otherwise required for the project (7.5 percent, 10 percent, or 12.5 percent). The fee on for-sale projects will be paid upon the sale of each market unit in the project. For rental projects, the fee shall be paid prior to approval by the City of occupancy of the project.

Larger Projects of 30 or More Units: Projects with 30 or more units must provide a whole BMR unit for any fractional unit of one-half (0.50) or larger; an in-lieu fee may be paid, or equivalent alternatives provided, when the fractional unit is less than one-half.

Adjustments, Waivers, Appeals of the BMR Requirement:
Within fifteen days of entering into a BMR agreement with the City for a project, the developer may request a determination that the BMR requirement, taken together with any inclusionary housing incentives, as applied the project, would legally constitute the taking of property without just compensation under the Constitution of the United States or of the State of California. The burden of proof shall be upon the developer, who shall provide such information as is reasonably requested by the City, and the initial determination shall be made by the Director of Planning and Community Environment. The procedures for the determination shall generally be those described in Chapter 18.90 of the Palo Alto Municipal Code, including the right of appeal to the City Council under Chapter 18.93, or such other procedures as may be adopted in a future BMR ordinance. Notice of the hearing shall be given by publication but need not be sent to nearby property owners. If the City determines that the application of the BMR requirement as applied to the project would constitute a taking of property without just compensation, then the BMR agreement for the project shall be modified, reduced or waived to the extent necessary to prevent such a taking.