Resale Price Formula for BMR Unit Based Upon 80 Percent of the Change in the Area Median Income (AMI) Below Market Rate (BMR) Home Ownership Program July 2008

The resale price formula is driven by a “base” appreciation index equal to 80% of the percentage increase in the AMI, with upper and lower limits on the resale price, as follows:

1) The “Base” appreciation index is equal to 80% of the percentage increase in the AMI over the seller’s period of ownership

2) Subject to the Following Price Ceiling:

   Resale Price Ceiling: The resale price cannot exceed the lesser of:

   (a) The then-current new sales prices of comparable BMR units (by number of bedrooms and unit’s original income category); and

   (b) 80% of the unrestricted market rate appraised value of the unit

3) Subject to the Following Price Floor:

   Resale Price Floor: The resale price will not be less than the greater of:

   (a) The original purchase price paid by the seller; and

   (b) A price affordable (at time of sale) to households at 75% of AMI (for the low moderate category units); or at 95% of AMI (for the high moderate category units)

4) To the price derived from the above calculations, the follow adjustments are made in order to determine the final sales price:

   Plus:
   a) The depreciated value of capital improvements; and
   b) The cost of mandatory special assessments levied by the homeowners association

   Less:
   a) The cost of curing deferred maintenance and repairs

Notes:
1 Recommended by Keyser Marston Associates in the BMR Study, March 2007 (Chapter 3.2, pages 3-16 to 3-25)
2 For example, a resale 3-bedroom townhome’s maximum price would equal the current year’s maximum price for new 3-bedroom BMR units
**BMR RESALE PRICE CALCULATION WITH 80% OF AMI FORMULA**

**SAMPLE CALCULATION USING 1987 - 2008 DATA**

<table>
<thead>
<tr>
<th>Calculation Date: June, 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address &amp; Description of Unit: 3 Bedroom Lower Moderate Unit</td>
</tr>
<tr>
<td>Years Unit Owned: 21</td>
</tr>
<tr>
<td>80% of the Percentage Change in AMI</td>
</tr>
<tr>
<td>Factor for Calculation: 80%</td>
</tr>
<tr>
<td>Purchase Price When New: $115,000</td>
</tr>
<tr>
<td>Purchase Date: June 1987</td>
</tr>
<tr>
<td>Month &amp; Year of AMI Used: June 2008</td>
</tr>
<tr>
<td>AMI Index at Purchase Date: $43,100</td>
</tr>
<tr>
<td>AMI Index at Sales Date: $105,500</td>
</tr>
<tr>
<td>Change in Index: $62,400</td>
</tr>
<tr>
<td>Total Percent Change in Index Over Time Owned: 144.78%</td>
</tr>
<tr>
<td>Modifier: 2.1582</td>
</tr>
<tr>
<td>BMR Calculated Value: $248,193</td>
</tr>
<tr>
<td>Appreciation: $133,200</td>
</tr>
<tr>
<td>Resale Price with 80% AMI (Rounded): $248,200</td>
</tr>
</tbody>
</table>

**Caps (Maximum Price): the Lesser of:**

a) Then Current New Unit Sales Price at Lower Moderate Income (based on 90% AMI); or $272,700

b) 80% of Unrestricted Fair Market Value ($800,000); $640,000

**Floors (Minimum Price): the Greater of:**

a) Original Price Paid by Seller; or $115,000

b) Then Current Affordable Price at 75% of AMI (for Similar Unit); $217,200

Resale Price (after Caps & Floor Adjustments); $248,200

Add: Depreciation Value of Capital Improvements; $12,500

Add: Special Assessments by HOA; $1,200

Deduct: Cost to cure deferred maintenance, repairs, cleaning, painting, etc; ($800)

**TOTAL ADJUSTED FINAL SALES PRICE;** $261,100
BMR Study: Comparison of CPI & AMI
1987 - 2007

Year
-2.0%
-1.0%
0.0%
1.0%
2.0%
3.0%
4.0%
5.0%
6.0%
7.0%
8.0%
9.0%
10.0%
11.0%
12.0%

Annual Percent Change

- Full CPI
- Full AMI
## ATTACHMENT D

### BMR Study: Appreciation Indexes: 20 Year Comparison of Full CPI, Full AMI & KMA's 80% of AMI (1987 - 2007)

<table>
<thead>
<tr>
<th>Year Number</th>
<th>Full CPI</th>
<th>Full AMI</th>
<th>KMA: 80% of AMI Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year</td>
<td>CPI Index Value</td>
<td>Percent Change in CPI Over Prior Year</td>
<td>20 Year CPI Value Increase (compounded)</td>
</tr>
<tr>
<td>--</td>
<td>115.4</td>
<td></td>
<td>$43,100</td>
</tr>
<tr>
<td>1</td>
<td>120.5</td>
<td>4.4%</td>
<td>$51,100</td>
</tr>
<tr>
<td>2</td>
<td>126.4</td>
<td>4.9%</td>
<td>$57,700</td>
</tr>
<tr>
<td>3</td>
<td>132.1</td>
<td>4.5%</td>
<td>$59,500</td>
</tr>
<tr>
<td>4</td>
<td>137.9</td>
<td>4.4%</td>
<td>$62,900</td>
</tr>
<tr>
<td>5</td>
<td>142.5</td>
<td>3.3%</td>
<td>$64,200</td>
</tr>
<tr>
<td>6</td>
<td>146.3</td>
<td>2.7%</td>
<td>$70,200</td>
</tr>
<tr>
<td>7</td>
<td>148.7</td>
<td>1.6%</td>
<td>$77,200</td>
</tr>
<tr>
<td>8</td>
<td>151.6</td>
<td>2.0%</td>
<td>$82,600</td>
</tr>
<tr>
<td>9</td>
<td>155.1</td>
<td>2.3%</td>
<td>$87,000</td>
</tr>
<tr>
<td>10</td>
<td>160.4</td>
<td>3.4%</td>
<td>$96,000</td>
</tr>
<tr>
<td>11</td>
<td>165.5</td>
<td>3.2%</td>
<td>$105,500</td>
</tr>
<tr>
<td>12</td>
<td>172.5</td>
<td>4.2%</td>
<td>$105,500</td>
</tr>
<tr>
<td>13</td>
<td>180.2</td>
<td>4.5%</td>
<td>$105,500</td>
</tr>
<tr>
<td>14</td>
<td>189.9</td>
<td>5.4%</td>
<td>$105,500</td>
</tr>
<tr>
<td>15</td>
<td>193.0</td>
<td>1.6%</td>
<td>$105,500</td>
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<tr>
<td>16</td>
<td>196.4</td>
<td>1.8%</td>
<td>$105,500</td>
</tr>
<tr>
<td>17</td>
<td>198.8</td>
<td>1.2%</td>
<td>$105,500</td>
</tr>
<tr>
<td>18</td>
<td>202.7</td>
<td>2.0%</td>
<td>$105,500</td>
</tr>
<tr>
<td>19</td>
<td>209.2</td>
<td>3.2%</td>
<td>$105,500</td>
</tr>
<tr>
<td>20</td>
<td>216.048</td>
<td>3.3%</td>
<td>$105,500</td>
</tr>
<tr>
<td>2008</td>
<td></td>
<td></td>
<td>$105,500</td>
</tr>
</tbody>
</table>

**Average Annual Percentage Change Over Last 20 Years**

- **Full CPI:** 3.2%
- **Full AMI:** 4.6%
- **KMA 80% of AMI:** 3.7%

### Resale Price Comparison for 3 BR BMR Originally Sold in 1987:

<table>
<thead>
<tr>
<th>Original Price</th>
<th>Full CPI Resale Price</th>
<th>Full AMI Resale Price</th>
<th>80% of AMI Resale Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>$115,000</td>
<td>$215,300</td>
<td>$281,500</td>
<td>$248,200</td>
</tr>
</tbody>
</table>

**Alternative Caps:**

1) 4% Compounded Appreciation: $251,979
2) Current 3 BR New Price: $272,700
### BMR PROGRAM UPDATE: Policy Changes Approved by the City Council on March 24, 2008  CMR: 173:08]

#### Goal #1: Improve the Current BMR Program

<table>
<thead>
<tr>
<th>Policy #</th>
<th>Policy Approved By City Council</th>
<th>Implementation</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. a.)</td>
<td><strong>Appreciation Formula, Maintenance &amp; Replacements Credit and Calculation of the Resale Price</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1       | **New AMI Based Appreciation Method**<br>Directed staff to return to Council at a later date with an analysis and a specific recommendation for an appreciation formula based on the County Area Median Income (AMI) to apply going forward | - To be adopted by Council motion  
- Include in revised deed restrictions | - To maintain BMR units in the 80 to 120% of AMI resale price range  
- Directly related to local housing affordability  
- Recommended by KMA |
| 2       | **$2,000 Annual Maintenance & Replacements Credit**<br>Directed that an annual maintenance and replacement credit of up to $2,000 per year be added to the resale price for current owners with units under the one-third CPI formula, with the combined total price not to exceed the price calculated at the full CPI | - Adopted by Council motion on Mar. 24, 2008 to be effective immediately for owners who want to sell now  
- Staff to implement by issuance of a policy memorandum | - To reward owners who have maintained their units |
| 3       | **Special Assessments Added to Resale Price**<br>Resale prices should be increased by the amount of Homeowners Association special assessments by the paid by the owner | - Adopted by Council motion on Mar. 24, 2008  
- Include in revised deed restrictions | - Confirms current practice |

1. b.) **Term of the Ownership BMR Deed Restrictions & Rental BMR Regulatory Agreements**

| 1       | Increase the term from the current 59 years to 89 years for new BMR units & resale units        | - Adopted by Council motion on Mar. 24, 2008  
- Amend BMR ordinance  
- Include in revised deed restrictions & future BMR rental regulatory agreements | - Support for long term, continued affordability of BMR units |
<table>
<thead>
<tr>
<th>Policy #</th>
<th>Policy Approved By City Council</th>
<th>Implementation</th>
<th>Council Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. c.</td>
<td>Improve the Condition of the Existing, Older BMR Housing Stock with the Provision of Limited City Financial Assistance to Very Low-Income BMR Owners of Older Units:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Add a New Housing Element Policy on Renovation Needs of Older BMR Units</td>
<td>- Add to Housing Element with next revision</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Create a Deferred Payment Renovation Loan Program for Very Low-Income BMR Owners</td>
<td>- Adopted by Council motion on Mar. 24, 2008</td>
<td>- To assist owners who cannot afford to repair or improve their unit and improve condition of older units</td>
</tr>
<tr>
<td>3.</td>
<td>Funding for Renovation Loans</td>
<td>- Funding for loans is available in the Residential Housing Fund; CDBG funds may also be a source</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Continue Pilot Program to Use Higher Resale Price to Fund Deferred Maintenance and Replacements by the New Buyer at Resale on an Interim Basis</td>
<td>- Include in revised Policy &amp; Procedures Manual</td>
<td>- Ensure higher standards of maintenance through incentives and requirements</td>
</tr>
<tr>
<td>5.</td>
<td>Revise Rules regarding Maintenance, Repairs and Improvement Credits and Approval Process</td>
<td>- Include in revised deed restrictions</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Require Professional Inspections and Warranty Plans (for resale units)</td>
<td>- Include in revised deed restrictions</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Maintain Existing City Special Assessment Loan Program (but review &amp; simplify eligibility rules &amp; procedures)</td>
<td>- Include new rules in Policy &amp; Procedures Manual</td>
<td></td>
</tr>
<tr>
<td>Policy #</td>
<td>Policy Approved By City Council</td>
<td>Implementation</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------------</td>
<td>----------------</td>
<td></td>
</tr>
<tr>
<td>1. d.</td>
<td><strong>Increase Efficiency of Program Administration, Clarify Rules &amp; Improve Owner Understanding:</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 1       | Revise Resale Process to Expand Buyers’ Financing Options | - Include in revised deed restrictions  
- Include new rules in Policy & Procedures Manual |
| 2       | Continue Local Live and / or Work in Palo Alto Preferences and Waiting List System | - Council reaffirmed current preferences & waiting list process |
| 1. e.   | **Eliminate the “Cost-Based” Pricing Exception Clause for New BMR Units in Program H-36; Continue to Base Newly Built BMR Prices Only on the Mortgage-Based Affordability Formula** | |
| 1       | Elimination of this rarely used clause will ensure new units are affordable by buyers in the target income groups | - Adopted by Council motion on Mar. 24, 2008  
- Delete from Housing Element text |
| 1. f.   | **Require a Customized Analysis of the BMR Obligation for Unusual Housing Product Types or Unique Proposals** | |
| 1       | Custom analysis will assist staff negotiate complex BMR agreements especially for unusual housing products; Analysis to be paid for by developers | - Adopted by Council motion on Mar. 24, 2008  
- Amend BMR ordinance |
| 1. g.   | **Clarify the City’s Priorities for Satisfaction by Developers of the BMR Requirement** | |
| 1       | Existing text in Housing Element Program H-36 lacks clarity | - Adopted by Council motion on Mar. 24, 2008  
- Revise Housing Element text  
- Amend BMR ordinance |
<table>
<thead>
<tr>
<th>Policy #</th>
<th>Policy Approved By City Council</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. h.</td>
<td><strong>Lower Threshold for the BMR Requirement</strong></td>
<td></td>
</tr>
</tbody>
</table>
| 1      | Lower the threshold to a uniform 3 units or 3 single family lots | - Adopted by Council motion on Mar. 24, 2008  
- Amend BMR ordinance |
| 2      | Permit the waiver of the BMR requirement if small, modest rental units are built in mixed use or all residential projects of less than 7 units | - Amend BMR ordinance |
| 1. i.  | **Conduct Further Technical Study of the BMR In-lieu Fee Formula** |
| 1      | Conduct a consultant study to develop a more adequate BMR in-lieu fee methodology | - Adopted by Council motion on Mar. 24, 2008  
- Staff will include in FY 2008-09 work program  
- Return to Council with study report & recommendations |
| 1. j.  | **Miscellaneous Changes in BMR Program H-36 Provisions** |
| 1      | **In-Lieu Fees for Fractional Units:**  
- Clarify rules for rounding  
- Study rounding up on projects with less than 30 units | - Adopted by Council motion on Mar. 24, 2008 |
| 2      | Subdivisions and Parcel Maps of Three of More Lots Intended for Construction of Single Family Homes: In-lieu fees should be the preferred method of satisfying the BMR requirement. | - Include in Housing Element revision  
- Amend BMR ordinance |
| 3      | Open Space (OS) District Projects: In-lieu fees should be the preferred method of satisfying the BMR requirement for OS developments | - Amend BMR ordinance |
| 4      | Use periodic reviews of key financial levers to keep program operating the way within Program objectives | - Adopted by Council motion on Mar. 24, 2008  
- Include in Housing Element revision |
| 1. k.  | **BMR Rental Program: Specific Policy for Rental BMRs** |
| 1      | - Establish More Specific Standards for Affordable Rents and Occupancy  
- Authorize the Director to Set Initial BMR Rents Annually | - Adopted by Council motion on Mar. 24, 2008  
- Include in Housing Element revision  
- Amend BMR ordinance |
Goal #2: Policy Changes to Strengthen the BMR Requirement to Increase Overall Affordable Housing Production

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2. a</td>
<td>Allow Substitution of Smaller Units Only If More BMR Units Are Provided by the Developer; Otherwise BMR Units Must Meet City Comparability Standards:</td>
<td>- Council motion to direct staff to: Study further as part of the Housing Element revision process</td>
</tr>
<tr>
<td></td>
<td>Establish more specific standards for staff to use in negotiating BMR agreements involving BMR units that are substantially different from the market units, including that a comparable total amount of square footage in the smaller units be required of the developer</td>
<td></td>
</tr>
<tr>
<td>- 2. b</td>
<td>Require Land Dedication as the Default Option on Larger Sites of Three or More Acres:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Utilize the BMR requirement to secure sites for very low-income rental housing development</td>
<td>- Council motion to direct staff to: Study further as part of the Housing Element revision process</td>
</tr>
<tr>
<td></td>
<td>If land dedication is not feasible or appropriate, then a standard agreement of developer built units in the project would be allowed instead</td>
<td></td>
</tr>
<tr>
<td>2. c.</td>
<td>Base the Minimum Number of BMR Units on the Site's Size and Zoning Capacity:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Set the minimum number of BMR units for a parcel based on the size, maximum zoning capacity rather than on the final number of units approved in the project</td>
<td>- Council motion to direct staff to: Study further as part of the Housing Element revision process</td>
</tr>
</tbody>
</table>
City Council Special Meeting of March 24, 2008
Excerpt from Approved Minutes

Item # 6: Policy and Services Committee Recommendations for Approval of Updated Below Market Rate (BMR) Program (pages 5 – 14)

UNFINISHED BUSINESS

6. Policy and Services Committee Recommendations for Approval of Updated Below Market Rate (BMR) Program. (continued from March 17, 2008)

Estelle Chalfin, 432 High Street, #302 spoke regarding the BMR units and the dues and maintenance fees.

Director of Planning and Community Environment, Steve Emslie stated Staff was recommending new ownership units would be entitled to full Consumer Price Index (CPI). Staff would institute a maintenance credit program for owners who were under the reduced CPI formula to maintain the units. Staff recommended creating a deferred payment loan program to allow very low-income BMR owners access to loans. Those loans would not be payable until the sale of the unit enabling access to housing funds to maintain their unit. The issue identified for the Council’s consideration was the requirement to lower the threshold for BMR requirements down to three units of multi-family and three units of single-family. The recommendation for the maintenance bonus program would be a $1,500 dollar per year credit applied, per year of ownership.

Mayor Klein asked whether the Council would be voting on all of the things on Attachment A in the City Manager’s Report (CMR).

Mr. Emslie stated that was Staff’s recommendation.

Mayor Klein stated he was concerned with the recommendations that stated they were subject to further study.

Mr. Emslie stated that the recommendations in the CMR noted as further study issues should be to the Housing Element Update being initiated for completion in 2009.

03/24/08
Mayor Klein asked for clarification of what exactly the Council was voting on.

Mr. Emslie stated that it was Staff's recommendation to include these items in the policy analysis for the Housing Element.

Council Member Barton asked if the Council asked to proceed with an Area Median Income (AMI) approach rather than a CPI approach should Council send it back to Staff to study further.

Mr. Emslie stated Staff would recommend sending it back for further analysis and then return to the Council with a formula based on the AMI formula.

Council Member Barton asked if the analysis would delay the schedule.

Mr. Emslie stated it would not amount to serious delay to the implementation of the recommendations.

Mayor Klein stated he wanted to separate the voting of the Staff recommendations.

Council Member Kishimoto stated that the recommendations raised issues. In the last 40 years, we have only produced an average of 7.5 BMR units per year. More market rate housing has been created. It appears there had been trouble meeting the low/very low-income level housing.

Mr. Emslie stated that there were numerous recommendations in the study that were necessary to facilitate the effective administration of the program. Staff could return to the Council prior to the initiation of the Housing Element to set the scope of service.

Council Member Yeh stated that the CMR stated that units must be resold in a timely manner and he asked what the timeframe was.

Mr. Emslie stated that the program had five months total from the time the unit became available to the conclusion.

Council Member Yeh stated that assuming there were no improvements made to a BMR unit and the owner decided not to go along with the low interest rate loan, what was the estimate for how long that unit may be on the market.

Mr. Emslie stated that Staff estimated about 20 percent of the units had issues regarding timeliness because of a variety of issues and deferred maintenance.
Council Member Yeh asked what would happen if the City were to take title of the units and what the timeframe and costs would be.

Mr. Emslie stated that due to escalating construction costs, it would be somewhere around 40-50 thousand dollars and would take an additional six months.

Council Member Morton stated that many of the owners view this more as an investment partnership. If the unit were valued at market price then it would be taken out of the BMR program.

Mr. Emslie stated that if the costs escalated to the point where the unit became market, then it would be lost to the BMR program unless the City invested additional housing funds into writing that unit cost down.

Council Member Morton asked whether the new units on the old Palo Alto medical site were rentals that were able to subsidize rent for people.

Mr. Emslie stated that was correct.

Council Member Morton stated if we converted the BMR units into rental units, we would be combining one program into another.

Mr. Emslie stated the program had always included both rental and ownership opportunities.

Council Member Morton stated if the Council decided upon a two thousand dollar per year credit per unit then the difference of the one-third CPI would be $171,200 versus $129,200. He asked whether that would basically go to the current holder of the housing contract.

Mr. Emslie stated that was correct.

Council Member Morton asked whether that was an indirect way of recognizing that we had a housing contract and rewarded long term owners for keeping their units in good maintenance.

Mr. Emslie stated that was correct.

Council Member Schmid stated there were many different reasons to buy rather than rent: 1) a fixed rate mortgage, which would give a flat rate repayment; 2) tax credits could pay 20 to 25 percent of your rent; 3) once a purchased unit is sold it makes a nice investment; 4) after the house is paid off you pay only association dues. He stated that one of the policy implications was the BMR program should shift more of the resources to affordable rental housing.

03/24/08
Mayor Klein asked Mr. Emslie if under the appreciation formula were there more alternatives then what was shown in the slides.

Mr. Emslie stated these were a summary of recommendations and the Council did have the choice to apply the full CPI to the units.

**MOTION:** Council Member Morton moved, seconded by Vice Mayor Drekmeier to direct Staff to adopt the formula of one third Consumer Price Index (CPI), plus resale price, plus annual maintenance and replacement credit up to $2,000 per year or full CPI to 2008 or whichever is lower.

Mayor Klein asked for clarification regarding the Motion whether he was asking for both the CPI and the maintenance credit going forward.

Mr. Emslie stated that the maintenance credits would just apply to the current owners for the one-third CPI and there would be no maintenance program, which had full CPI.

Mayor Klein asked whether that was the Motion.

Council Member Morton stated that going forward it would be with full CPI and for the previous owners we would give them a maintenance credit of 2,000 dollars per year.

Mayor Klein stated that would produce more than the retroactive CPI.

Council Member Morton stated only for those units where there has been a concern to keep the unit at a quality maintenance level. There would be no need to reward the owners who had not maintained their units.

Mayor Klein stated he was concerned with the people who would be coming out ahead of CPI.

Council Member Morton stated in the last twenty years units have gone from $150,000 to $750,000 and in those situations, maintaining the unit was something they should be rewarded for with maintenance dollars.

Vice Mayor Drekmeier asked for the Maker of the Motion to consider a $2,000 maintenance credit up to the full CPI.

Council Member Morton stated he would support that.

Council Member Schmid stated that AMI was a better measure for our program than the CPI. CPI was only related to either affordability or the cost of housing and in the past, it had not worked. He asked to substitute the
AMI for the County which was directly related to housing affordability in Santa Clara County.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to use full Annual Medium Income (AMI) program in lieu of CPI formula from 2008 on, which will be brought back to Council at a later date.

Council Member Morton stated that would mean we would start as of today with the Medium Income levels as published by the County. Those annual changes would be the measure of the future appreciation in the housing contract.

Mr. Emslie stated that was correct.

Council Member Morton asked if we could adopt this policy and leave open the question of whether it would be a change of AMI or CPI and resolve that issue depending on future Staff input.

Mayor Klein asked for clarification if we could use AMI for past and future.

Council Member Schmid stated no.

Mayor Klein asked whether we would use CPI up until the date we adopt this and only use AMI going forward.

Council Member Schmid stated that was correct.

Mr. Emslie stated that Staff understood that they will use AMI as a way to calculate affordability in the future and CPI would apply to the existing units.

Council Member Morton asked whether it would only be to calculate the CPI cap.

Mr. Emslie stated it was understood that CPI would be used to calculate the cap for the bonus program.

Council Member Schmid stated it was his understanding that Association of Bay Area Government (ABAG) uses the AMI to calculate the income levels.

Mr. Emslie stated that many cities had used this calculation and the problem was it was subject to radical change and could create unintended consequences because the income levels in the County did fluctuate regularly. Staff could return with a formula that was based on AMI.
Council Member Kishimoto stated that the recommendation to peg future price increases based on AMI was exactly what the Keyser Marston Associates, Inc. (KMA) study had recommended. She asked if Staff would be coming back with data for Council to vote on.

Mr. Emslie stated that Staff would provide a specific recommendation that could come back on the Consent Calendar and confirm the use of the formula.

Council Member Kishimoto asked whether Mr. Emslie could summarize what the incentives and requirements were with the upgrading of the units.

Mr. Emslie stated the credits would still be based on CPI for the existing units and AMI for the future.

Council Member Kishimoto stated she had expected higher incentives and requirements for maintaining the units.

Mr. Emslie stated that all of the BMR units had standards for maintenance. Staff would explore and include in the follow up recommendations to ensure higher levels of maintenance for newer units in the AMI formula.

Council Member Barton stated from a policy point of view, it would be to try to maintain these units in the 80 to 120 percent of AMI. He stated he was concerned with the period of time where CPI could be significantly higher than AMI and asked when this would return to Council.

Council Member Espinosa asked what Staff would research differently to reach a different conclusion.

Mr. Emslie stated that Staff had not anticipated any of the administrative issues that the formula KMA had prepared based on AMI. Staff would like to make sure that the adjustments were fitting and achieve the desired outcome.

City Attorney Gary Baum stated the City Attorney’s Office would need to review anything that was prepared.

Mayor Klein expressed his concern regarding people who may want to sell their units. He stated the first part of the formula was fixed and easy to calculate and he did not want to see that part delayed and asked to divide the Motion.

Mr. Emslie stated it was possible.

Mr. Baum stated it was not necessary to divide the Motion.

03/24/08
Mayor Klein stated his concern was with the switch over from CPI to AMI for the people who own right now and want to sell right now.

Mr. Emslie stated that Staff understood the Council’s direction.

Vice Mayor Drekmeier asked if AMI was a countywide figure.

Mr. Emslie stated yes.

Vice Mayor Drekmeier asked if that was just Santa Clara County.

Mr. Emslie stated yes.

Council Member Morton stated that the first part of the policy would state that we were directing Staff to revise the appreciation formula to AMI going forward with the final wording to be presented to the Council.

**MOTION PASSED: 8-0, Burt absent**

**MOTION:** Council Member Morton moved, seconded by Council Member Barton to improve the condition of the existing older BMR housing stock by creating a deferred payment renovation loan program for very low-income BMR owners.

Council Member Morton stated that there were new owners in the BMR program facing major assessments with no easy way to fund. We would be enabling them to participate in a housing contract, and the costs would be deferred and taken into consideration on the sale of the unit.

**MOTION PASSED: 8-0, Burt absent**

**MOTION:** Council Member Morton moved, seconded by Council Member Barton to lower the threshold for the BMR requirement to 3 new units or 3 single family lots from the current 5.

Mr. Emslie stated that any current application would use the existing threshold and any new application for development that came in after the Council’s action would be subject to the lower threshold for three units rather than the current five.

Mayor Klein asked how that would affect a three-unit Developer.

Mr. Emslie stated they would be subject to an in-lieu fee calculated based on a percentage of the sales price.
Mayor Klein asked what the percentage was.

Mr. Emslie stated it was seven and a half percent of the sales price of the home or unit.

Mayor Klein stated the in-lieu fund would add 35 thousand dollars to the cost of the unit.

Mr. Emslie stated yes.

Council Member Schmid stated the in-lieu fee had a financial benefit to the Developer using the in-lieu payment and would need further justification. The in-lieu fees need an appropriate adjustment to make it equal to the cost of building.

Mayor Klein asked to make that a separate Motion.

Council Member Morton stated that we were not shifting from unit contributions. This would be for smaller developments where the required percentage would not require us to get a BMR unit and would not affect the larger developments. He did not intend his Motion to be an in-lieu fee because that would be problematic.

Council Member Barton stated this would bring more funds into our in-lieu fee and help create additional units. It would be reasonable to be concerned with those who are developing smaller projects.

Council Member Yeh asked in regards to developers whether Staff had a sense of proportionate impact of who would be developing the smaller unit projects versus the larger projects.

Mr. Emslie stated that they had received requests for smaller units where there were duplexes, three and four unit complexes, which tend to be smaller local developments instead of the big publicly traded developers who handle the bigger projects.

Council Member Yeh asked whether there were concerns with the lower threshold and a greater burden being placed on those particular developers.

Mr. Emslie stated that the units go for the market rate, which has been more than enough to handle the in-lieu payment from a small development.

Council Member Yeh stated his concern was having an unintended consequence for the larger projects if for some reason developers found this an unfriendly development on the policy front.

03/24/08
Council Member Espinosa asked regarding bench marking for other Cities on this last point and what we saw in the Bay Area for other jurisdictions who have lowered this down to a three-unit threshold.

Mr. Emslie stated it was estimated that about 30 percent of jurisdictions that had BMR inclusionary housing requirements have applied fees or dedication of units at five or fewer. We would be par with about 30 percent of the Cities that did inclusionary housing.

**MOTION PASSED:** 8-0, Burt absent

**MOTION:** Council Member Schmid moved, seconded by Council Member Kishimoto to direct Staff to study Policy # 1.1.1. which reads “Consultants found that in-lieu fees are a financial benefit to the developer and that the methodology needs further adjustment to bring those fees in-line with development costs.

Mr. Baum asked for clarification whether that was direction to Staff to study and return to Council.

Mayor Klein stated it should be direction to Staff to study the issue and return with it.

Mr. Emslie stated it was in the overall recommendation to return with that.

Council Member Morton asked whether the Council was asking Staff to return and provide us with their opinion on whether or not converting to a complete in-lieu fee program was advisable.

Mr. Emslie stated the consultants had recommended that the in-lieu fee was too low.

Council Member Morton stated the in-lieu fee was seven percent and for the larger developments they would be paying 15 percent or more. We are asking Staff to return with a proper level of the in-lieu fee.

Council Member Espinosa asked for clarification whether this was already in the plan.

Mr. Emslie stated it was but Council comments were always welcome on any Staff recommendation.

**MOTION PASSED:** 8-0, Burt absent
MOTION: Council Member Barton moved, seconded by Council Member Morton to approve remaining Staff supported items in Attachment A to CMR 173:08;
1.a.) Recommendations Related to Appreciation and Calculation of the Resale Price; Continue to Emphasize the Goal of Permanent Affordability of BMR Units
1.b Recommendations on the Term of the Ownership BMR Deed Restrictions & Rental BMR Regulatory Agreements
1.c. Recommendations to Improve the Condition of the Existing, Older BMR Housing Stock with the Provision of Limited City Financial Assistance to Very Low Income BMR Owners of Such Units
1.d. Increase Efficiency of Program Administration, Clarify Rules & Improve Owner Understanding
1.e. Eliminate the “Cost-Based” Pricing Exception Clause for New BMR Units in Program H-36; Continue to Base Newly Built BMR Prices Only on the Mortgage Affordability Formula
1.f. Require a Customized Analysis of the BMR Obligation for Unusual Housing Product Types or Unique Proposals
1.g. Clarify the City’s Priorities for Satisfaction by Developers of the BMR Requirement
1.h. Lower the Threshold for the BMR Requirement for Five Units to Three Units or Residential Parcels
1.i Conduct Further Technical Study the BMR In-lieu Fee Formula
1.j. Miscellaneous Changes in Program H-36 Provisions for Incorporation into BMR Ordinance
1.k. BMR Rental Program: Specific Policy for Rental BMRs

Council Member Barton stated there were another 25 Staff supported items and were about things that were going to return in the work plan for the Comprehensive Plan (Comp. Plan). These were items that had been through Policy and Services (P&S) and/or the Planning and Transportation Commission (P&TC) multiple times.

Council Member Schmid stated that one item he would like to discuss was Attachment A, Page 4, 1.d)2. There was a division between Staff and the P&TC over local preferences and the waiting lists. He asked if the current methodology of the waiting list make it impossible for new entrees into the City to participate in our BMR program. He added that as the Stanford issue was addressed are we expanding employment or eliminating workers coming from out of town to participate in our BMR program.

AMENDMENT: Council Member Schmid moved, seconded by XXX to have Staff explore the Planning and Transportation Commission evaluation of preference point system BMR qualifications.

AMENDMENT FAILED FOR LACK OF SECOND.
MOTION PASSED: 8-0, Burt absent

03/24/08