



**TOWN OF LOS GATOS  
COUNCIL AGENDA REPORT**

MEETING DATE: 10/06/2020

ITEM NO: 7

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**DATE:** September 30, 2020  
**TO:** Mayor and Town Council  
**FROM:** Laurel Prevetti, Town Manager  
**SUBJECT:** Consider Approval of Amendments and Introduce the Draft Ordinance by Title Only to Amend Chapter 29 (Zoning Regulations) of the Town Code Regarding the Below Market Price Program and Adopt a Resolution to Modify the Below Market Price Housing Program Guidelines. Town Code Amendment Application A-20-004. Applicant: Town of Los Gatos.

**RECOMMENDATION:**

Consider approval of amendments and introduce the draft Ordinance by title only to amend Chapter 29 (Zoning Regulations) of the Town Code regarding the Below Market Price Program (Attachment 2) and adopt a resolution to modify the Below Market Price Housing Program Guidelines (Attachment 3).

**BACKGROUND:**

The Town first adopted BMP regulations in 1976 to provide the Town with a supply of affordable housing. The BMP regulations have been modified over the years since they were first adopted, with the most recent modifications to the regulations occurring in 2009.

The Town's BMP regulations have resulted in a current inventory of 55 for sale BMP units and 119 rental BMP units. The Town's administrator of the BMP Housing Program, Hello Housing, manages the daily operations of the program in partnership with the Town.

At the request of a previous Mayor, the discussion of BMP regulations was placed on the March 5, 2019 Town Council agenda. At the March 5, 2019 meeting, the Town Council discussed the matter and forwarded the item to the Town Council Policy Committee for review and recommendations.

**PREPARED BY:** JOCELYN SHOOPMAN  
Associate Planner

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Reviewed by: Town Manager, Assistant Town Manager, Town Attorney, and Finance Director

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SUBJECT: Below Market Price Program

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BACKGROUND (continued):

On April 9, 2019, August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020, the Policy Committee considered potential amendments to the Town Code regarding BMP regulations and modifications to the BMP Housing Program Guidelines.

On January 28, 2020, the Policy Committee recommended staff bring forward amendments to Chapter 29 of the Town Code regarding BMP regulations and modifications to the BMP Housing Program Guidelines for consideration by the Planning Commission and the Town Council to increase the number of BMP units built and decrease the opportunities to pay in-lieu fees, resulting in the construction of more on-site BMP units for development projects.

On August 12, 2020, the Planning Commission reviewed the proposed Town Code amendments regarding the Below Market Price Program and modifications to the Below Market Price Housing Program Guidelines (Attachment 4). Exhibit 2 contains the Town Council minutes for the March 5, 2019 meeting, and Exhibits 3 through 7 contain the Policy Committee minutes for the April 9, 2019, August 27, 2019, September 24, 2019, November 25, 2019, and January 28, 2020 meetings.

The Planning Commission recommended modifications to the draft Ordinance language and the draft BMP Housing Program and Guidelines based on the discussion at its hearing. The modifications as recommended by the Planning Commission are included in the draft Ordinance (Attachment 2) and draft BMP Housing Program and Guidelines (Attachment 3). The Planning Commission's recommended modifications are shown in black ~~strike through~~ and underline font and the additional modifications proposed by Hello Housing are shown in red ~~strike through~~ and underline font. Attachment 5 contains the verbatim minutes for the Planning Commission meeting.

As part of the larger conversation regarding Los Gatos becoming a more inclusive community, the Town hosted a community workshop regarding affordable housing on September 29, 2020. Town Manager Prevetti, Director Paulson, Town Attorney Schultz, and Associate Executive Director for West Valley Community Services Sujatha Venkatraman listened to community ideas and answered questions regarding existing program and services, State legislation, and new opportunities to increase affordable housing in Los Gatos (see Attachment 8 for the workshop summary).

DISCUSSION:

The Planning Commission raised the following questions for staff to address for the Council. Staff's response is contained below each question:

DISCUSSION (continued):

1. How does the point system account for part-time employees or self-employed persons who hold more than one job across the County?
  - a. The total number of hours worked at all jobs within the Town of Los Gatos or the total number of hours worked at all jobs within the County of Santa Clara are added together. For self-employed workers, a self-affidavit must be provided as part of the application submittal.
2. What is the mechanism to require that a second unit constructed by participating in the Incentive Program remain affordable for a minimum of 30 years?
  - a. A property owner that participates in the Incentive Program must record a deed restriction on the property that stipulates the rental rate, tenant income level, duration of affordability, and loan repayment requirement, as well as any other criteria as determined appropriate by the Town.
3. What happens to the tenant of a rental unit if their household income increases to exceed the specified Median Family Income (MFI) limit?
  - a. If a tenant's income exceeds the specified MFI limit, the rent may be increased to the average rent of similar units in the complex; in this case, the unit will no longer be a BMP unit and the next available unit that is comparable in size shall be designated as a BMP unit in its place, and must be rented to an eligible household so that the number of BMP units within the project remains the same.
4. Due to the need for more affordable housing, should the number of BMP units required for a development project be increased by an additional 10 percent?
  - a. Attachment 6 contains a comparison of affordable housing requirements for other cities located in Santa Clara County and Alameda County, prepared for the County of Santa Clara by Keyser Marston Associates in 2016. To modify the threshold for the number of BMP units required in a development project, a nexus study would be required.
5. Due to the need for more affordable housing, should the in-lieu fee be increased?
  - a. Attachment 6 contains a comparison of affordable housing requirements for other cities located in Santa Clara County and Alameda County prepared for the County of Santa Clara by Keyser Marston Associates in 2016. To modify the in-lieu fee for BMP units, a nexus study would be required.
6. Does the Town have the ability to limit the Homeowners Association (HOA) fees for a BMP unit?
  - a. The Town does not have the ability to set a maximum limit on the HOA fees for a BMP unit.

DISCUSSION (continued):

7. Does increasing the rental household annual income from no greater than 80 percent of the MFI to 120 percent of the MFI, increase the applicant pool; therefore, causing less of a preference for low and very low households?
  - a. Increasing the household income for rental units up to 120 percent of the MFI, would result in additional qualified applicants being able to submit an application for a BMP rental unit. The California Department of Housing and Community Development defines a moderate-income level as 80 percent to 120 percent of the local area median income.
8. Should the point system be modified to grant additional points to low and very low-income levels to allow a greater opportunity to participate in the program?
  - a. The Town Council may choose to modify the point system to grant additional points to low and very low-income levels. Additional analysis might be required to determine if this modification would allow low and very low-income levels a greater opportunity to participate in the program.
9. How do the BMP Housing Program and Guidelines account for the resale valuation of a BMP unit where the previous owner completed upgrades to the home?
  - a. The BMP Housing Program and Guidelines detail that BMP homeowners have the opportunity to increase their resale price to reflect pre-approved documented costs. To maintain the affordability for future BMP owners, the Town will cap all eligible capital improvements at 10 percent of the resale price.

CONCLUSION:

Staff recommends that the Town Council:

1. Make the finding that there is no possibility that this project will have a significant impact on the environment; therefore, the project is not subject to the California Environmental Quality Act [Section 15061 (b) (3)] (Attachment 1);
2. Make the required finding that the amendments to Chapter 29 of the Town Code in the Draft Ordinance are consistent with the General Plan (Attachment 1); and
3. Make the required finding that the modifications to the BMP Housing Program Guidelines are consistent with the General Plan (Attachment 1); and
4. Introduce the Ordinance of the Town of Los Gatos effecting the amendments of the Town Code regarding BMP regulations A-20-004 (Attachment 2), by title only with any specific changes identified and agreed upon by the majority of the Town Council; and
5. Adopt a Resolution approving modifications to the BMP Housing Program Guidelines (Attachment 3), with any specific changes identified and agreed upon by the majority of the Town Council.

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ALTERNATIVES:

Alternatively, the Council may:

1. Continue this item to a date certain with specific direction to staff;
2. Refer the item back to the Planning Commission with specific direction; or
3. Take no action, leaving the Town Code and BMP Housing Program and Guidelines unchanged.

ENVIRONMENTAL ASSESSMENT:

The project is Categorically Exempt pursuant to the adopted Guidelines for the Implementation of the California Environmental Quality Act, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the proposed amendments to the Town Code will have a significant effect on the environment.

ATTACHMENTS:

1. Required Findings
2. Draft Ordinance
3. Draft Resolution
4. August 12, 2020 Planning Commission Staff Report with Exhibits
5. August 12, 2020 Planning Commission Verbatim Minutes
6. Table V-1 of Affordable Housing Nexus Study prepared for Santa Clara County
7. Public Comment received by 11:00 a.m., October 1, 2020
8. September 29, 2020 Community Workshop Summary