

**Ordinance No. 1340**  
**Replacing San Carlos Municipal Code Chapter 18.200,**  
**Below Market Rate Housing Program**

It is ordained by the City Council of the City of San Carlos as follows:

**SECTION ONE.** San Carlos Municipal Code Chapter 18.200 entitled Below Market Rate Housing Program is replaced in its entirety as follows:

**“ Below Market Rate Housing Program**

**SECTION 18.200.010. 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 following.
- (B) Offset the demand on housing that is created by new development and mitigate environmental and other impacts that accompany new residential and commercial development by protecting the economic diversity of the City’s housing stock; reducing traffic, transit and related air quality impacts; promoting jobs/housing balance; and reducing the demands placed on transportation infrastructure in the region.
- (C) 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.
- (D) Support the General Plan Policy to provide a variety of housing types and densities directed toward accommodating the needs and desires of the community’s residents.
- (E) Support the General Plan Policy to promote the development and improvement of housing within the economic reach of those people employed within the community.
- (F) Support the General Plan Policy to promote the development and improvement of housing that is within the economic means of those people employed within the industrial community.
- (G) Meet the housing needs identified by the Housing Element of the General Plan.
- (H) Encourage the production of the Very Low-, Low-, and Moderate-Income Units planned for in the Housing Element of the General Plan.
- (I) Support the West Side Specific Plan Land Use Goal to improve upon existing conditions by increasing the availability of housing.
- (J) Support the West Side Specific Plan Housing Goal to provide housing opportunities for downtown workers in the Specific Plan Area.
- (K) Support the West Side Specific Plan policy to facilitate increased housing affordability.

**SECTION 18.200.020. FINDINGS.**

The City Council finds and determines that:

- (A)** Both California and the City face a serious housing problem that threatens their economic security. Lack of access to affordable housing has a direct impact upon the health, safety and welfare of the residents of the City. The City will not be able to contribute to the attainment of State housing goals or to retain a healthy environment without additional affordable housing. The housing problem has an impact upon a broad range of income groups including many who are not impoverished by standards other than those applicable to California's and the City's housing markets, and no single housing program will be sufficient to meet the housing need.
- (B)** A lack of new Below Market Rate Units will have a substantial negative impact on the environment and economic climate because (i) housing will have to be built elsewhere, far from employment centers and therefore commutes will increase, causing increased traffic and transit demand and consequent noise and air pollution; and (ii) City businesses will find it more difficult to attract and retain the workers they need. Below Market Rate housing policies contribute to a healthy job and housing balance by providing more affordable housing close to employment centers.
- (C)** Federal and state funds for the construction of new affordable housing are insufficient to fully address the problem of affordable housing within the City. Nor has the private housing market provided adequate housing opportunities affordable to Median-, Low- and Very Low-Income Households.
- (D)** The California Legislature has required each local government agency to develop a comprehensive, long-term general plan establishing policies for future development. As specified in the Government Code (at Sections 65300, 65302(c), and 65583(c)), the plan shall: (i) "encourage the development of a variety of types of housing for all income levels, including multifamily rental housing;" (ii) "[a]ssist in the development of adequate housing to meet the needs of low- and moderate-income households;" and (iii) "conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action." Increasing the requirements of the Below Market Rate Housing Program was one of the tools promised in the State-approved San Carlos Housing Element.
- (E)** Some of the public and private sector employees needed to meet the needs of the community earn incomes only adequate to pay for Below Market Rate housing. Examples of some of these employees in our community include restaurant workers, tax accountants, government employees, childcare providers and auto mechanics. Because Below Market Rate housing is in short supply within the City, these employees may be forced to live in less than adequate housing, pay a disproportionate share of their incomes to live in adequate housing, or commute ever-increasing distances to their jobs from housing located outside the City. These circumstances harm the City's ability to attain goals articulated in the City's General Plan and strain the City's ability to accept and service new market-rate housing development.
- (F)** The Bay Area is one of the most expensive places to live in the United States. The cost of housing is the single most important factor driving the cost of living. This makes the region especially vulnerable when capable workers choose to live and work in other regions

because they cannot afford housing. Moreover, employers who cannot afford to operate in the Bay Area may leave the region, taking jobs with them. According to the Association of Bay Area Governments, as of June 2001, the City planned 19 jobs for every one housing unit added. This was the highest ratio of any community in all 101 cities and nine counties in the Bay Area.

- (G)** According to the May 2004 Analysis of Impediments to Fair Housing Choice, housing affordability is a problem in San Mateo County. Although relatively affluent with per capita income 59% and household income 48% higher than the State average, San Mateo County housing prices are 120% higher than the State median.
- (H)** A survey in 1999 by the Bay Area Council found that only 27% of the needed Very Low-Income Units, 35% of the needed Low-Income Units, and 54% of the needed Moderate-Income units were being produced in the Bay Area. San Carlos did not produce sufficient housing to match the natural population increase from 1990-2000. The State of California has determined that the City of San Carlos needs to plan to accommodate 65 Very Low-Income Units, 32 Low-Income Units, and 89 Moderate-Income Units by 2006.
- (I)** According to the County of San Mateo and based on Census 2000 data, in San Carlos there are 287 overcrowded housing units; 2,611 Extremely Low-, Very Low-, and Low-Income households that are paying 30% or more of their household income for housing; and 1,929 Extremely Low-, Very Low-, and Low-Income households that pay 35% or more of their household income for housing. These are housing needs addressed by this ordinance.
- (J)** An economic consulting firm studied the effects of increasing the affordability percentage, lowering the threshold of providing a Below Market Rate Unit to four-unit projects, more precisely prescribing the sequencing of the Below Market Rate Units, and extending the time period for affordability. Based on the analysis, the professional opinion of the firm is that the residual land value is sufficient to continue attracting Builders to build housing in San Carlos.
- (K)** The citizens of the City seek a well-planned, aesthetically pleasing and balanced community, with housing affordable to Very Low-, Low- and Median-Income Households. Below Market Rate housing should be available throughout the City, and not restricted to a few neighborhoods and areas. However, there may also be trade-offs where constructing affordable units at a different site than the site of the principal project may produce a greater number of affordable units without additional costs to the project applicant. Thus, the City finds that in certain limited circumstances, the purposes of this Chapter may be better served by allowing the Builder to comply with the Below Market Rate requirement through alternative means, such as development of offsite housing. For example, if a project applicant can produce a significantly greater number of affordable units off-site, then it may (but not always) be in the best interest of the City to permit the development of affordable units at a different location than that of the principal project.
- (L)** Many of the jobs in San Carlos involve assembly and product manufacturing which are at the lower end of the wage scale. The escalation of housing costs on the Peninsula over the past decade has resulted in prices and rents that are beyond the means of many employees working in the industrial area. The imbalance has adversely affected employers as well as the City in a number of ways. Employees unable to find housing in the immediate area are forced to commute long distances to communities where less expensive housing is available. This is an energy waste and tends to clog highways and streets. Employers have a difficult time recruiting necessary workers. The ultimate result is often a corporate decision to limit

production in this area and seek other areas of the country for expansion or relocation where housing and labor are less costly. The City ultimately suffers from reduced growth, relocation of business, lost sales tax, and reduced purchasing power.

- (M) The City Council established the Project Area Committee (PAC), a citizens' advisory committee, and its associated subcommittee, the Housing Committee. These two bodies reviewed, considered, and debated recommended changes to this ordinance during public meetings from 2000 to 2004. In addition, dedicated outreach to other interested parties including local builders, real estate professionals, and apartment owners and managers was conducted in 2003 and 2004. Based on the Committee recommendations and other public input, the City Council gave conceptual approval to a Below Market Rate housing program in July 2003 and directed staff to develop an ordinance that reflected the recommendations. Based on the Committee recommendations and public input, the City Council finds that it is necessary to adopt a Below Market Rate Housing Program in order to address the City's housing crisis.
- (N) The City is aware that there is a debate about whether or not Below Market Rate housing requirements make market-rate housing more expensive. In weighing all the factors, including the significant need for affordable housing, the City has made the decision that the community's interests are best served by the adoption of the Below Market Rate Housing Program ordinance.
- (O) The City is aware that larger developments may more easily absorb Below Market Rate Unit requirements due to certain economies of scale and have therefore adjusted the sequencing of the level of affordability for each new Below Market Rate Unit required under this ordinance.

#### **SECTION 18.200.030. DEFINITIONS.**

As used in this Chapter, the following terms shall have the following meanings:

- (A) **Administrator** means the City Manager of the City or his or her designee.
- (B) **Affordable Rent** means monthly rent that does not exceed one-twelfth of 30 percent of the maximum annual income for a Household of the applicable income level (Median-, Low- or Very Low-Income) or the allowable Fair Market Rent as defined annually by HUD if used in conjunction with acceptance of a Section 8 Housing Choice Voucher.
- (C) **Affordable Ownership Cost** means a sales price that results in a monthly housing cost (including mortgage, insurance and home association costs, if any) that does not exceed one-twelfth of 30 percent of the maximum annual income for a Household of the applicable income (Median-, Low- or Very Low- Income).
- (D) **Area Median Income** means the median Household income as provided in Section 50093(c) of the California Health and Safety Code.
- (E) **Below Market Rate Housing Agreement** means a written agreement between Builder and the City as provided by Section 18.200.070 (C) of this Chapter.
- (F) **Below Market Rate Housing Plan** means a plan for a Residential Development submitted by a Builder as provided by Section 18.200.070 (B) of this Chapter.
- (G) **Below Market Rate Unit (BMR)** means a dwelling unit that shall be offered at an Affordable Rent or Affordable Ownership Cost to Median-, Low- and Very Low-Income Households.

- (H) **Builder** means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities, which seeks City approvals for all or part of a Residential or Commercial Development.
- (I) **City** means the City of San Carlos.
- (J) **Household** means one person living alone or two or more persons sharing residency whose income is considered for housing payments.
- (K) **Low-Income Household** means a Household whose annual income does not exceed the qualifying limits set for “lower income households” in Section 50079.5 of the California Health and Safety Code.
- (L) **Market Rate Unit** means a dwelling unit in a Residential Development that is not a Below Market Rate Unit.
- (M) **Median-Income Household** means a Household whose income does not exceed the qualifying limits set for “persons and families of median income” in Section 50093 (c) of the California Health and Safety Code.
- (N) **Moderate-Income Household** means a Household whose income does not exceed the qualifying limits set for “persons and families of low or moderate income” in Section 50093 of the California Health and Safety Code.
- (O) **Off-Site Unit** means a Below Market Rate Unit that will be built separately or at a different location than the principal development.
- (P) **On-Site Unit** means a Below Market Rate Unit that will be built at the same location as the principal development.
- (Q) **Residential Development** means the construction of any residential dwelling units or conversion of apartments to condominiums, including those as part of a mixed-use development.
- (R) **Standard Unit** means the base Market-rate Unit that a purchaser could buy or renter could lease without paying for additional features or upgrades such as flooring, cabinetry, or fixtures.
- (S) **Valuation** means the total value of estimated construction costs as defined in the California Building Code.
- (T) **Very Low-Income Household** means a Household whose income does not exceed the qualifying limits set for “very low income households” in Section 50105 of the California Health and Safety Code.

**SECTION 18.200.040. RESIDENTIAL DEVELOPMENT REQUIREMENTS.**

For all Residential Developments of 7 or more residential units, at least 15 percent of the total units shall be Below Market Rate Units restricted for occupancy by Median-, Low- or Very Low-Income Households. The number of Below Market Rate Units required for a particular project will be determined only once, at the time of tentative or parcel map approval, or, for developments not processing a map, prior to issuance of a building permit. If a change in the Residential Development design results in a change in the total number of units, the number of Below Market Rate Units required will be recalculated to coincide with the final approved project.

- (A) **Calculation.** In determining the number of whole Below Market Rate Units required, any decimal fraction less than 0.5 shall be rounded down to the nearest whole number, and any decimal fraction of 0.5 or more shall be rounded up to the nearest whole number. See Table 18.200.040.
- (B) **Type of Below Market Rate Units.** Below Market Rate Units shall be distributed among Very Low-, Low-, and Median-Income units as described in 18.200.040 (C) unless an alternative is approved as described in Section 18.200.080. See Table 18.200.040.
- (C) **Sequence of Below Market Rate Units.** The first Below Market Rate Unit occupied in any Residential Development shall be restricted to occupancy by a Very Low-, Low- or Median-Income Household, the second Below Market Rate Unit shall be restricted to occupancy by a Very Low- or Low-Income Household, and the third Below Market Rate Unit shall be restricted to occupancy by a Very Low-Income Household. The fourth Below Market Rate Unit shall be restricted to occupancy by a Very Low- or Low-Income Household and the fifth Below Market Rate Unit shall be restricted to occupancy by a Very Low-Income Household. Any additional Below Market Rate units shall follow the same sequence as described for the fourth and fifth Below Market Rate Units. See Table 18.200.040.
- (D) **Partial Unit Fee.** For the Residential Development of one (1) unit, the Builder shall pay a Partial Unit Fee based on 1% of the Valuation. For the Residential Development of two (2) to six (6) units, or for the Residential Development of units that trigger a decimal fraction of less than 0.5, the Builder shall pay a Partial Unit Fee based on 2% of the Valuation of the portion of the units that trigger the decimal fraction of less than 0.5. Alternatively, instead of paying the Partial Unit Fee, the Builder may choose to build an additional Below Market Rate Unit at the affordability level designated in Table 18.200.040.

Table 18.200.040

Total Number of Units in Development	BMR Unit Requirement			Partial-Unit Fee
	Very Low	Low	Median	
1	0	0	0	1% of Valuation
2 to 6	0	0	0	2% of Valuation or one BMR unit
7	<b>&lt;- 1st Unit -&gt;</b>			0
8				2% of 1/8 Valuation or one Moderate unit
9				2% of 2/9 Valuation or one Very Low unit
10	<b>&lt;- 2nd Unit -&gt;</b>			0
11				2% of 1/11 Valuation or one BMR unit
12				2% of 2/12 Valuation or one BMR unit
13				2% of 3/13 Valuation or one Low unit
14				2% of 4/14 Valuation or one Low unit
15				2% of 5/15 Valuation or one Very Low unit
16				2% of 6/16 Valuation or one Very Low unit
17	<b>&lt;-3rd Unit-&gt;</b>			0
18				2% of 1/18 Valuation or one BMR unit
19				2% of 2/19 Valuation or one BMR unit
20				2% of 3/20 Valuation or one Low unit
21				2% of 4/21 Valuation or one Low unit
22				2% of 5/22 Valuation or one Very Low unit
23				2% of 6/23 Valuation or one Very Low unit
24	<b>&lt;- 4th Unit -&gt;</b>			0
25				2% of 1/25 Valuation or one BMR unit
26				2% of 2/26 Valuation or one BMR unit
27				2% of 3/27 Valuation or one Low unit
28				2% of 4/28 Valuation or one Very Low unit
29				2% of 5/29 Valuation or one Very Low unit
30	<b>&lt;-5th Unit-&gt;</b>			0
30 + units				15% minimum requirement spread between various income levels as described by this Chapter

**SECTION 18.200.050. EXEMPTIONS.**

The requirements of this Chapter do not apply to:

- (A) Residential Development of a legal second dwelling unit.
- (B) Residential remodels that do not increase total floor area.
- (C) Single-family residential additions that increase the existing floor area by less than twenty-five (25) percent.
- (D) The reconstruction of any residential units that have been destroyed by fire, flood, earthquake or other act of nature provided that the reconstruction of the site does not increase the number of legally-constructed residential units and does not increase the total

square footage of the legally constructed building(s) immediately prior to the destruction by more than 25 percent of the building(s) or 1,000 square feet, whichever is less.

- (E) Residential Developments that already have more deed-restricted units that are affordable to Median-, Low- and Very Low-Income Households than this Chapter requires.

**SECTION 18.200.060. BELOW MARKET RATE UNIT STANDARDS.**

Below Market Rate Units built under this Chapter shall conform to the following standards:

- (A) **Design.** Except as otherwise provided in this Chapter, Below Market Rate Units shall be dispersed throughout a Residential Development and shall have all features indistinguishable from Market-rate Standard Units including construction materials and quality, interior and exterior materials and design, amenities, and infrastructure (including sewer, water and other utilities). The size and number of bedrooms for Below Market Rate Units shall be in the same proportion as in the total number of units in the Residential Development.
- (B) **Timing.** All Below Market Rate Units shall be constructed and occupied concurrently with or prior to the construction and occupancy of Market-rate Units. In phased Residential Developments, Below Market Rate Units may be constructed and occupied in proportion to the number of units in each phase of the Residential Development.
- (C) **Duration of Affordability Requirement.** Below Market Rate Units produced under this ordinance shall be legally restricted to occupancy by Households of the income levels for which the units were designated for the useful life of the buildings.

**SECTION 18.200.070. COMPLIANCE PROCEDURES.**

- (A) **General.** Approval of a Below Market Rate Housing Plan and implementation of an approved Below Market Rate Housing Agreement is a condition of any rezoning, General Plan change, Planning Permit, tentative map, parcel map or building permit for any Development for which this Chapter applies. This Section does not apply to exempt projects or to projects where the requirements of the Chapter are satisfied by payment of a fee under Sections 18.200.040 (D).
- (B) **Below Market Rate Housing Plan.** The Administrator shall approve, conditionally approve or reject the Below Market Rate Housing Plan. No application for a tentative map, parcel map or building permit to which this Chapter applies may be deemed complete until a complete Below Market Rate Housing Plan is submitted to the Administrator. The Below Market Rate Housing Plan shall include:
  - (1) The location, structure (attached, semi-attached, or detached), proposed tenure (for-sale or rental), number of bedrooms, and size of the proposed Market Rate and Below Market Rate Units and the basis for calculating the number of Below Market Rate Units;
  - (2) A floor or site plan depicting the location of the Below Market Rate Units;
  - (3) The income levels to which each Below Market Rate Unit will be made affordable;

- (4) The mechanisms that will be used to assure that the units remain affordable for the desired term, such as resale and rental restrictions, deeds of trust, and rights of first refusal and other documents;
- (5) For phased Residential Development, a phasing plan that provides for the timely development of the number of Below Market Rate Units proportionate to each proposed phase of development;
- (6) A description of any incentives or concessions as listed in Section 18.200.090 that are requested of the City;
- (7) Any alternative means designated in Section 18.200.080 (A) proposed for the Residential Development along with information necessary to support the findings required by Section 18.200.080 (B) for approval of such alternatives;
- (8) The conceptual plan for initial sales or rental by the Builder of the Below Market Rate units; and
- (9) Any other information reasonably requested by the Administrator to assist with evaluation of the Below Market Rate Housing Plan under the standards of this Chapter.

**(C) Below Market Rate Housing Agreement.** The forms of the Below Market Rate Housing Agreement, resale and rental restrictions, deeds of trust, rights of first refusal and other documents authorized by this subsection, and any change in the form of any such document which materially alters any policy in the document, shall be approved by the Administrator and the City Attorney or his or her designee or the Redevelopment Agency attorney or his or her designee prior to being executed with respect to any Residential Development or Affordable Housing Proposals. The form of the Below Market Rate Housing Agreement will vary, depending on the manner in which the provisions of this Chapter are satisfied for a particular development. All Below Market Rate Housing Agreements shall include, at minimum, the following:

- (1) Description of the Residential Development, including whether the Below Market Rate Units will be rented or owner-occupied;
- (2) The number, size and location of all Below Market Rate Units;
- (3) Below Market Rate incentives by the City (if any), including the nature and amount of any local public funding;
- (4) Provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal or rental restrictions;
- (5) Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident Households for income eligibility; and
- (6) Any additional obligations relevant to the compliance with this Chapter.

**(D) Recording of Agreement.** Below Market Rate Housing Agreements that are approved and fully executed shall be recorded against owner-occupied Below Market Rate Units and residential projects containing rental Below Market Rate Units. Additional rental or resale restrictions, deeds of trust, rights of first refusal and/or other documents acceptable to the Administrator shall also be recorded against owner-occupied Below Market Rate Units. In cases where the requirements of this Chapter are satisfied through the development of Off-

Site Units, the Below Market Rate Housing Agreement shall simultaneously be recorded against the property where the Off-Site Units are to be developed.

#### **SECTION 18.200.080. ALTERNATIVES.**

**(A) Builder Proposal.** A Builder may propose an alternative means of compliance in an Affordable Housing Plan as provided in Section 18.200.070 according to the following provisions:

- (1) *Increase in total number of Below Market Rate Unit bedrooms.* The Builder may propose a plan that provides larger units and increases the total number of bedrooms that would have otherwise been provided under this Chapter, even if fewer total units are produced.
- (2) *Provision of a greater level of affordability.* The Builder may propose a greater level of affordability than required under this Chapter and reduce the total number of units otherwise required.
- (3) *Off-Site Construction.* Below Market Rate Units may be constructed off-site within the City limits if it can be demonstrated that off-site construction would result in a minimum of a ten percent more total Below Market Rate Units than required by this ordinance and if the Below Market Rate Units will be located an area where, based on the availability of affordable housing, the Administrator finds that the need for such units is greater than the need in the area of the proposed development. Off-site Below Market Rate Units shall meet or exceed minimum quality standards specified in conditions of approval.
- (4) *Preservation of historically significant structures.* Adjustments may be made to the required number and affordability level of the Below Market Units based on the economics associated with preservation of historically significant structures as identified under guidelines as set forth by the California Environmental Quality Act (CEQA).
- (5) *Combination.* The Administrator may accept any combination of the above options that is at least equal to the cost of providing Below Market Rate Units on-site as would otherwise be required by this Chapter.

**(B) Findings.** The Administrator may approve, conditionally approve or reject any alternative proposed by a Builder as part of an Affordable Housing Plan. Any approval or conditional approval shall be based on a finding that the purposes of this Chapter would be better served by implementation of the proposed alternative(s) and that the proposal meets the greatest community needs at the time the alternative is reviewed. In determining whether the purposes of this Chapter would be better served under the proposed alternative, the Administrator should consider whether implementation of an alternative would overly concentrate Below Market Rate Units within any specific area and, if so, shall reject the alternative unless the undesirable concentration of Below Market Rate Units is offset by other identified benefits that flow from implementation of the alternative in issue.

**SECTION 18.200.090. INCENTIVES AND CONCESSIONS FOR DEVELOPMENT OF ALL ON-SITE BELOW MARKET RATE UNITS.**

The City may provide one or more of the following incentives or concessions to a Builder who elects to satisfy the Below Market Rate housing requirements of this Chapter by producing rental units or owner-occupied housing units on the site of a Residential Development.

- (A) **Density bonus.** Where builders of housing units create one or more affordable units at or below the Low-Income category, they are entitled to one additional unit for each unit at or below the Low-Income level provided on-site upon the issuance of a conditional use permit by the Planning Commission. This density bonus shall not apply to single-family residential developments or substitute for density bonuses allowed under California Government Code Section 65915.
- (B) **Modified Development Standard Calculations.** Additional unit(s) approved under the density bonus incentive shall be exempted from floor area ratio and density requirements. In addition, the additional units will not be counted in determining the required number of BMR units.
- (C) **Flexible Parking Standards.** Allow limited reductions in the parking requirements related to the residential units or allow limited use of tandem and/or shared parking arrangements or allow a combination of these modified parking standards.
- (D) **Permit Streamlining.** In certain zoning districts, the requirement of a conditional use permit for residential units above the ground floor may be eliminated.
- (E) **Financial Assistance.** To the extent budgeted by the City Council and otherwise available, financial assistance from the City or from sources as may be available to the City may be available to the Builder in the form of loans or grants for the Below Market Rate housing component of the Residential Development. Builder shall be responsible for complying with all requirements associated with the particular funding source(s).

**SECTION 18.200.100. ELIGIBILITY FOR BELOW MARKET RATE UNITS.**

- (A) **General Eligibility.** If the City or its designee maintains a list or identifies eligible Households, initial and subsequent occupants will be selected first from the list of identified Households, to the maximum extent possible, in accordance with any rules approved by the Administrator.
- (B) **Preferences.** Preferences will be given to those households where at least one member in the Household lives or works in San Carlos or works for a school district serving the residents living in the City of San Carlos, except for those deemed ineligible due to conflict of interest noted in Section 18.200.100 (C).
- (C) **Conflict of Interest.** The following individuals are ineligible to purchase or rent a Below Market Rate Unit with which they were directly involved as specified below: (i) Elected City Council officials (including their spouse and dependents) who participated in the approval process for a project with Below Market Rate Units; (ii) the project applicant and its officers and employees (and their spouse and dependents); and (iii) the project owner and its officers and employees (and their spouse and dependents).

- (D) **Occupancy.** Any Household which occupies a rental Below Market Rate Unit or purchases a Below Market Rate Unit shall occupy that unit as its principal residence and shall not lease or sublease to a different party.

**SECTION 18.200.110. OWNER-OCCUPIED UNITS.**

- (A) **Initial Sales Price.** The initial sales price of the Below Market Rate Unit shall be set by the City so that the eligible Household will pay an Affordable Ownership Cost. The City shall respond to written requests by the Builder and provide the Builder with a good-faith estimate of the Initial Sale Price during pre-development. The City shall set the initial sales price at the time a building permit is issued. In no case will the initial sales price be lower than the most recently-requested estimate.
- (B) **Initial Sales Deed Restrictions.** Deed restrictions provided by the City and recorded against title to the Below Market Rate Unit shall be required as condition of sale for all owner-occupied Below Market Rate Units and will include, but are not limited to, the City's right of first-refusal, resale restrictions, and procedures and policies regarding changes in title.

**SECTION 18.200.120. RENTAL UNITS.**

Rental units will be offered to eligible Households at an Affordable Rent. The owner of rental Below Market Rate Units shall certify each tenant Household's income to the City or City's designee at the time of initial rental and annually thereafter. The owner shall obtain and review documents that demonstrate the prospective renter's total income, such as income tax returns or W-2s for the previous calendar year and most recent earning statement, and submit such information on a form approved by the City.

- (A) **Selection of Tenants.** The owners of rental Below Market Rate Units shall fill vacant units by selecting income-eligible Households from the San Mateo County Office of Housing Section 8 Housing Choice Voucher program or from the City's Waiting List, if one exists. Alternatively, owners may fill vacant units through their own selection process, provided that they publish notices of the availability of Below Market Rate Units according to guidelines established by the Administrator.
- (B) **Non-Discrimination.** When selecting tenants, the owners of Below Market Rate units shall follow all fair-housing laws, rules, regulations, and guidelines. The owner shall apply the same rental terms and conditions to tenants of Below Market Rate 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.
- (C) **Annual Report.** The owner shall submit an annual report summarizing the occupancy of each Below Market Rate Unit for the year, demonstrating the continuing income-eligibility of the tenant. The Administrator may require additional information to confirm household income and rental price of the unit if he or she deems it necessary.
- (D) **Periodic Audit.** The City maintains the right to periodically audit the information supplied to the City for the Annual Report if deemed necessary to ensure compliance with this Chapter. In addition, owners of Below Market Rate Units shall cooperate with any audits conducted by the City, State agencies, Federal agencies, or their designees.

- (E) Changes in Tenant Income.** If, after moving into a Below Market Rate Unit, a tenant's Household income exceeds the limit for that unit, the following shall apply:
- (1) If the tenant's income does not exceed the income limits of other Below Market Rate Units in the Residential Development, the owner may, at the owner's option, allow the tenant to remain in the original unit and re-designate the unit as affordable to Households of a higher income level, as long as the next vacant unit is re-designated for the income category previously applicable to the tenant's Household. Otherwise, the tenant shall be given six-month's notice to vacate the unit. If during those six months, a Below Market Rate Unit meeting the revised income threshold becomes available and the tenant meets the income eligibility for that unit, the owner shall allow the tenant to apply for that unit.
  - (2) If there are no units designated for a higher income category within the Development that may be substituted for the original unit, the tenant shall be given six month's notice to vacate the unit. If within those six months, another unit in the Residential Development is vacated, the owner may, at the owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market-rate and designate the newly vacated unit as a Below Market Rate Unit affordable at the income-level previously applicable to the unit converted to market rate. The newly vacated unit shall be comparable in size (for example, number of bedrooms, bathrooms, square footage, etc.) as the original unit.

#### **SECTION 18.200.130. BELOW MARKET RATE FUND.**

- (A) Trust Fund.** A fund for the deposit of fees established under this and similar prior Municipal Codes exists as Fund 29 (the "Fund"). This Fund shall receive all fees contributed under this Chapter and may also receive monies from other sources.
- (B) Purpose and Limitations.** Monies deposited in the Fund shall be used to increase and improve the supply of housing affordable to Median-, Low-, Very Low-, and Extremely Low-Income Households. Monies may also be used to cover reasonable administrative or related expenses associated with the administration of this Chapter.
- (C) Administration.** The Fund shall be administered by the Administrator, who may develop procedures to implement the purposes of the Fund consistent with the requirements of this Chapter and subject to any adopted budget of the City.
- (D) Expenditures.** Fund monies shall be used in accordance with City's Housing Element, Redevelopment Plan, or subsequent plan adopted by the City Council to maintain or increase the quantity, quality, and variety of affordable housing units or assist other governmental entities, private organizations or individuals to do so. Permissible uses include, but are not limited to, land acquisition, debt service, parcel assemblage, gap financing, housing rehabilitation, grants, unit acquisition, and other pursuits associated with providing affordable housing. The Fund may be used for the benefit of both rental and owner-occupied housing.

**SECTION 18.200.140. ENFORCEMENT.**

**(A) Penalty for Violation.** It shall be a misdemeanor to violate any provision of this Chapter. Without limiting the generality of the foregoing, it shall also be a misdemeanor for any person to sell or rent to another person a Below Market Rate Unit under this Chapter at a price or rent exceeding the maximum allowed under this Chapter or to sell or rent a Below Market Rate Unit to a Household not qualified under this Chapter. It shall further be a misdemeanor for any person to provide false or materially incomplete information to the City or to a seller or lessor of a BMR Unit to obtain occupancy of housing for which he or she is not eligible.

**(B) Legal Action.** The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Chapter, including: (i) actions to revoke, deny or suspend any permit, including a Building Permit, certificate of occupancy, or discretionary approval; (ii) actions to recover from any violator of this Chapter civil fines, restitution to prevent unjust enrichment from a violation of this Chapter, and/or enforcement costs, including attorneys fees; (iii) eviction or foreclosure; and (iv) any other appropriate action for injunctive relief or damages. Failure of any official or agency to fulfill the requirements of this Chapter shall not excuse any person, owner, Household or other party from the requirements of this Chapter. ”

**SECTION TWO. SEVERABILITY.**

That the City Council hereby declares that it would have adopted this Ordinance sentence by sentence, paragraph by paragraph, and section by section, and does hereby declare that any provisions on this Ordinance are severable and, if for any reason any sentence, paragraph or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

**SECTION THREE. EFFECTIVE DATE**

Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

**SECTION FOUR.**

The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

INTRODUCED on the 8<sup>th</sup> day of November, 2004.

PASSED AND ADOPTED as an Ordinance of the City of San Carlos at a regular meeting thereof held on the 22<sup>nd</sup> day of November, 2004.

AYES, COUNCIL MEMBERS: \_\_\_\_\_  
NOES, COUNCIL MEMBERS: \_\_\_\_\_  
ABSENT, COUNCIL MEMBERS \_\_\_\_\_  
ABSTAIN, COUNCIL MEMBERS \_\_\_\_\_

\_\_\_\_\_  
MAYOR of the City of San Carlos

ATTEST: \_\_\_\_\_  
CITY CLERK of the City of San Carlos