

ORDINANCE NO. 408

ORDINANCE AMENDING CHAPTER 15 (ZONING REGULATIONS) OF THE SARATOGA CITY CODE BY ADDING ARTICLE 15-82 TO IMPLEMENT INCLUSIONARY REQUIREMENTS PURSUANT TO POLICY 5.1-1 OF THE ADOPTED 2023-2031 HOUSING ELEMENT

The City Council of the City of Saratoga finds that:

1. On March 20, 2024, in accordance with State Housing Element Law (Government Code Sections 65580 et seq.) the City of Saratoga (the City) adopted the 2023-2031 Housing Element (Housing Element) to accommodate the regional housing need allocation (RHNA) of 1,712 housing units assigned to the City by the Association of Bay Area Governments, including 454 units affordable to very-low income households, 261 units affordable to low-income households, 278 units affordable to moderate-income households, and 719 units affordable to above moderate-income households.
2. The Housing Element of the General Plan identifies and analyzes existing and projected housing needs and contains the official policies for the preservation, conservation, rehabilitation, and production of housing in the City of Saratoga.
3. The Housing Element Policy Program describes the specific policy actions necessary to address present and future housing needs and to meet the specific requirements of State law.
4. This ordinance creates Article 15-82 of the Saratoga City Code Chapter 15 (Zoning Regulations) to implement Housing Element Programs 5.1-1 (Inclusionary Housing Ordinance) and 4.3-2 (Housing for Persons Employed in Saratoga) and to increase the diversity, supply, and affordability of housing in City. This Article sets out requirements for housing developments of five or more units to provide at least fifteen percent of those units as “below-market-rate,” subject to limitations on the prices that may be charged and on the incomes of households qualified to live in them. Such units may be for rent or for sale. The Article provides mechanisms for ensuring that the units remain affordable and for enforcing the ordinance in the event of a failure to comply. It further provides for the administration of the Article’s requirements, including through the development of administrative guidelines. By these means, the Article balances the needs of the City in achieving the goals of the Housing Element with the property and investment interests of landowners and neighbors.
5. On February 26, 2025, the Planning Commission held a duly noticed public hearing consistent with Section 15-85.050 of the Saratoga Municipal Code and considered the proposed ordinance adding Article 15-82 to the Saratoga City Code. The Planning Commission considered all supporting documents, and all testimony and other evidence presented at the public hearing; and recommended that the City Council adopt the inclusionary housing ordinance (Planning Commission Resolution 25-002).

6. On March 19, 2025, the City Council held a duly noticed public hearing consistent with Section 15-85.080 of the Saratoga Municipal Code and, after considering the supporting documents and all testimony and other evidence presented at the public hearing, introduced this Ordinance and waived the reading thereof.
7. The City Council adopted this Ordinance at a duly noticed regular meeting on April 2, 2025.

Therefore, the City Council of the City of Saratoga hereby ordains as follows:

Section 1. Adoption.

Article 15-82 is added to the Saratoga City Code as set forth in Attachment 1.

Section 2. Severance Clause.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held invalid, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated.

Section 3. California Environmental Quality Act

On March 20, 2024, the City Council certified the Final Environmental Impact for the 2023-2031 Housing Element project described in the findings above, and adopted CEQA Findings and a Statement of Overriding Considerations for impacts that were found to be significant and unavoidable, adopted and incorporated all of the mitigation measures for the Housing Element project, and adopted a Mitigation Monitoring and Reporting Program. None of the amendments adopted by this ordinance require subsequent or supplemental environmental analysis under CEQA, as described in Public Resources Code Section 21166 and CEQA Guidelines Section 15162 because there has not been a substantial change to the project; a substantial change to the circumstances under which the project is being undertaken, or new information, which was not known and could not have been known at the time the environmental analysis was completed, that has become available.

Section 4. Publication.

A summary of this ordinance shall be published in a newspaper of general circulation of the City of Saratoga within fifteen days after its adoption.

Following a duly noticed public hearing the foregoing ordinance was introduced at the regular meeting of the City Council of the City of Saratoga held on the 19th day of March 2025, and was adopted by the following vote on April 2, 2025.

AYES: COUNCIL MEMBERS FITZSIMMONS, WALIA, ZHAO; VICE MAYOR PAGE; MAYOR AFTAB

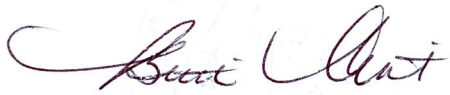
NOES: NONE

ABSENT: NONE


ABSTAIN: NONE


Belal Y. Aftab, Mayor

ATTEST:


Britt Avrit, MMC, City Clerk

APPROVED AS TO FORM:


Richard Taylor
CITY ATTORNEY

DATE: 4/2/25

Attachment 1 – Amendment to Chapter 15 of the Saratoga City Code

Article 15-82 INCLUSIONARY HOUSING ORDINANCE

15-82.010 Purposes of Article.

This Article establishes the Below-Market-Rate Housing Program (BMR program) pursuant to the City's inclusionary housing requirements. The purpose of this Article is to increase the diversity, supply, and affordability of housing in the City of Saratoga (City). The BMR program is a necessary part of the City's efforts to meet its own housing goals as well as the regional housing needs of the Bay Area as required by state law.

15-82.020 Definitions.

Terms used in this Article have the meanings set forth below:

- (a) "Affordable" means housing provided to households at a specified household income level at an "affordable housing cost" as defined in Health and Safety Code § 50052.5 or "affordable rent" as defined in Health and Safety Code § 50053. Where those sections specify the option, costs must not exceed 30 percent of gross income of the household.
 - (1) "Housing cost" is defined in 25 CCR § 6920.
 - (2) "Rent" is defined in 25 CCR § 6918.
- (b) "AMI" means the area median income for Santa Clara County, adjusted for household size, found in 25 CCR § 6932, as published periodically by HCD pursuant to Health and Safety Code § 50093.
- (c) "Below-market-rate (BMR) unit" means an ownership or rental unit under the BMR program that is affordable to low- and/or moderate-income households as this Article requires.
- (d) "BMR guidelines" means administrative guidelines for the BMR program.
- (e) "California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this Article are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).
- (f) "Density bonus" means an approval of additional dwelling units, reduced parking, incentives, and concession or waivers of development standards under City Code Article 15-81 and Government Code § 65915, et seq.
- (g) "Floor area" is defined in City Code § 15-06.280.
- (h) "Gross income" is defined in 25 CCR § 6914.
- (i) "HCD" means the State Department of Housing and Community Development.
- (j) "Household income level" means the Official State Income Limits found in 25 CCR § 6932 for Santa Clara County for the respective levels below, adjusted for household size as found in the same regulation. The Official State Income Limits are determined and published periodically by HCD pursuant to Health and Safety Code § 50093.

- (1) “Very low-income household” is defined in 25 CCR § 6926 (approximately 50 percent or less of AMI).
 - (2) “Low-income household” means a lower income household whose gross income exceeds the qualifying limit for very low-income households (approximately 50 percent to 80 percent of AMI).
 - (3) “Lower income household” is defined in 25 CCR § 6928 (approximately 80 percent or less of AMI).
 - (4) “Moderate-income household” is defined in 25 CCR § 6930 (approximately 80 percent to 120 percent of AMI).
 - (5) If the income limit index referenced in this section, or successor indexes, are no longer published by HCD, then the Community Development Director shall select a successor index published by a federal, state, or county agency. In doing so, the Community Development Director shall select from their research the index that most closely corresponds with the previous index.
- (k) “Market-rate unit” means a housing unit or the legal lot for such a unit offered on the open market at the prevailing market rate for purchase or rental.
- (l) “On-site” means an affordable housing unit required by the BMR program is integrated with the project’s market-rate units and dispersed throughout the development according to the BMR program requirements. Except when required to develop senior housing in compliance with applicable laws, development of affordable units in a separate, stand-alone structure, even if that stand-alone structure is on the same parcel or assessor’s parcel number (APN) as the market-rate building, does not meet the definition of on-site.
- (m) “Residential development” means any development that includes an application to the City for planning or building permits to create one or more dwelling units, to convert nonresidential uses to residential uses, or to convert residential units from rental to ownership. As used herein, “residential development” includes, without limitation, rental housing; for-sale housing; mixed-tenure housing; mixed-use residential; detached single-family dwellings; duplexes; triplexes; multiple-family dwelling structures; condominium or townhouse developments; condominium conversions; and land subdivisions intended to be sold or rented to the general public. However, for purposes of this Article, housing developments in which all units are affordable to low- and/or moderate-income households and licensed community care facilities, as defined in Health and Safety Code § 1502(a), are excluded from the definition of residential development.

15-82.030 General requirements.

- (a) **Objective standard.** The basic requirement of the BMR program is the provision of on-site BMR units integrated with market-rate units for both rental and ownership residential developments as set forth in more detail in this Article.
- (b) **Application completeness.** An application for a residential development project will not be complete until the applicant has submitted plans and proposals which demonstrate the manner in which the applicant proposes to meet the requirements of this article.

- (c) **Agreement required.** Prior to the recordation of any parcel map or final map in the case of subdivisions, or prior to the issuance of building permits for any residential development that does not require a subdivision, the applicant shall enter into an agreement recorded against the entire subdivision or property, requiring compliance with every applicable provision of this Article including, without limitation, the requirements of sections 15-82.030(f), (g), and (h), and the BMR guidelines. The agreement shall run with the land and bind the applicant's and the landowner's respective successors and assigns. The agreement shall additionally provide that the applicant shall be responsible for the City's costs in preparing the agreement and any instruments required to be recorded by this Article, and that the applicant shall indemnify and hold the City harmless against any and all claims and harms arising from the applicant's compliance with this Article. The City Council may approve a template agreement, any significant deviation from which will require City Council approval.
- (d) **Applicability.** The BMR program requirements shall apply to all residential developments with at least five dwelling units. Accessory dwelling units are included in the calculation of dwelling units. A residential development with fewer than five dwelling units is exempt from the BMR program.
- (e) **Percentage requirement; affordability levels.** All residential developments, unless otherwise exempted by this Article, shall provide at least 15 percent of the total number of dwelling units as affordable units.
- (1) **Ownership units.** All ownership residential developments that meet the requirement of Section 15-82.030(d) shall include at least 15 percent of the total number of ownership dwelling units within the development as units affordable to moderate-income households (approximately 80 percent to 120 percent of AMI).
- (2) **Rental units.** All rental residential developments that meet the requirement of Section 15-82.030(d) shall include at least 15 percent of the total number of rental dwelling units within the development as units affordable to lower income households (approximately 80 percent or less of AMI). Of the 15 percent BMR units, at least 50 percent must be affordable to very low-income households (50 percent or less of AMI), including any remainder unit from an uneven division (notwithstanding Section 15-82.030(e)(3) below).
- (3) **Modification.** The affordability levels required for a residential development may be modified by the agreement entered pursuant to Section 15-82.030(c). An agreement including such a modification requires approval by the City Council, which may grant such approval only upon finding that such modification is necessary to achieve the City's Regional Housing Needs Allocation (RHNA) goals in the then-current housing element cycle.
- (4) **Fractions of units.** In calculating the number of affordable units required, any fraction of a whole number shall be rounded up or down. Fractions of 0.00 to 0.49 shall be rounded down to the nearest whole unit, while fractions of 0.50 to 0.99 shall round up to the nearest whole unit.
- (f) **Qualifying households.** All BMR rental units shall be rented only to qualified lower- or moderate-income households, and all BMR ownership units shall be sold only to qualified

lower- or moderate-income households. Rents, sales prices, and eligible household sizes for BMR units shall comply with the requirements pursuant to the BMR guidelines.

- (g) **Concurrent development of on-site BMR and market-rate units.** All BMR units in a residential development and phases of a residential development shall be constructed concurrently with or prior to the construction of market-rate units. In phased projects, on-site BMR units shall be distributed among the phases proportionally to the market-rate units. The City shall not issue certificate of occupancy for any market rate unit unless at the time of issuance the cumulative number of such certificates issued for market-rate units throughout the project would be proportional to the cumulative number of such certificates issued for BMR units (including BMR units issued certificates simultaneously to the market rate units). This concurrency requirement may be modified by the agreement entered pursuant to Section 15-82.030(c). An agreement including such a modification requires approval by the City Council, which may grant such approval only upon finding that the project would be financially infeasible without such modification.
- (h) **Location and design of on-site BMR units.** All BMR units shall be reasonably physically dispersed throughout the project. In residential developments with more than one building or product type, the BMR units shall be dispersed among all of the building and product types that comprise the development. Either or both of these dispersion requirements may be modified by the agreement entered pursuant to Section 15-82.030(c). An agreement including such a modification requires approval by the City Council, which may grant such approval only upon finding that financing for the project under any federal or state program for supporting below-market-rate housing would be unavailable without the modification. All BMR units shall be consistent with federal and state fair housing laws, have a distribution of units by number of bedrooms proportionate to distribution of the market-rate units, and be of comparable size with market-rate units based on floor area of the units, except that affordable units for seniors shall comply with applicable requirements for senior housing. The actual location of a BMR rental unit within a complex shall be permanently assigned to a particular dwelling unit.

The exterior design of the BMR units shall be consistent with the market-rate units in the project and units shall be comparable in terms of interior design, appearance, materials, and quality of finishes. BMR units shall have the same access to project amenities and recreational facilities as market-rate units. BMR rental units shall be renovated on a similar schedule as market-rate units.

- (i) **Term.** BMR units shall be maintained as affordable housing for the term specified below. Housing cost and rent as defined in 15-82.020(a) must remain affordable to the BMR unit's specified household income level for the specified term.
- (1) Rental units shall be subject to the restrictions of the BMR program for 55 years.
 - (2) Ownership units shall be subject to the restrictions of the BMR program for 45 years.
- (j) **Density bonus.** Units provided in compliance with the provisions of this Article may be applied towards a request for a density bonus, provided that the affordable units meet the stricter of the BMR program requirements and the density bonus law.

- (k) **Fees.** Applicants for residential developments that meet the requirement of Section 15-82.030(b) shall pay a fee for the costs to City of administering the BMR Program for the BMR units required by this Article in such amount as established from time to time by resolution of the City Council. Such fee shall be due and payable to the City as follows: for any residential development that requires a subdivision map (including a parcel map), prior to approval of the final map; or residential development that does not require a subdivision map, prior to the issuance of the first grading or building permit for the development.
- (l) **Administration.** The BMR program shall be administered by the Saratoga Community Development Director or Director's designee, who may exercise any of the City's authority under this Article, except that the Community Development Director shall not delegate the City's authority to exercise an option under Section 15-82.050. The City shall issue BMR guidelines to implement the BMR program. The City may designate, appoint, or contract with any other public agency or for-profit or non-profit organization to perform some or all of the City's obligations under the BMR program, subject to all applicable laws governing the City's contracting authority.

15-82.040 Restrictions on rental units.

- (a) All buildings including BMR rental units shall be subject to a declaration of restrictions or similar instrument, in form and content approved by the City Attorney, to ensure compliance with this Article. Such declaration shall be recorded prior to the first certificate of occupancy for the building.
- (b) BMR rental units shall be available only to qualifying households pursuant to Section 15-82.030(f) above.
- (c) BMR rental units shall be offered at affordable rent.

15-82.050 Restrictions on ownership units.

- (a) All BMR ownership units shall be sold subject to the following:
- (1) A recorded declaration of restrictions or similar instrument, in form and content approved by the City Attorney, securing compliance with the BMR program, including all requirements of this Section 15-82.050. The instrument shall include an option that entitles the City the first right to purchase a BMR ownership unit at the lowest of the following purchase prices:
- (i) Market value as determined by an appraisal acceptable to the City.
- (ii) The purchase price paid by the seller, plus one-third of the increase (during the period of seller's ownership) in the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics.
- (iii) An amount equal to the price affordable to the household income level specific to the BMR unit.

- (2) A deed of trust, enforceable by the City, in form and content approved by the City Attorney, providing the City a security interest on which the City may foreclose for noncompliance with the BMR program.
- (b) Except as provided in this Section 15-82.050, BMR ownership units shall be sold at a purchase price that provides for an affordable housing cost on a monthly basis.
- (c) An owner of a BMR ownership unit shall provide the City a notification of intent to sell no later than 60 calendar days prior to listing the unit. An owner shall notify and receive approval from the City prior to initiating a refinance, title change, or transfer of ownership. The City is entitled to pursue all available remedies against an owner if an owner fails to notify and receive approval from the City, including the City's exercise of its option to purchase the BMR ownership unit or a City action to foreclose on the BMR ownership unit under the City's deed of trust.
- (d) The declaration of restrictions and deed of trust shall contain any other provisions considered necessary by the City to implement the BMR program, and shall be recorded against the property. Both instruments shall be executed by the owner and the City, and binding on successors in interest for at least the same duration otherwise required by the BMR program. The City may require that additional notices or other document(s) be recorded. A reference to the declaration of restrictions and deed of trust shall be included in all deeds or conveyances of BMR units.
- (e) Exceptions.
 - (1) A BMR unit may be sold to a non-eligible household if the requesting party demonstrates:
 - (i) Inability to obtain a qualified buyer after 180 days of good faith efforts that are reasonable according to then-current practices in Santa Clara County for sales of residential real estate; and
 - (ii) The City has decided not to exercise its option to purchase the BMR unit.
 - (2) A unit sold pursuant to Section 15-82.050(e)(1) above may be sold for market price. In any sale pursuant to such an exception, the seller will be entitled to the amount of the lowest price listed in Section 15-82.050(a)(1) above. The balance of the proceeds shall be paid to the City of Saratoga. The unit shall be sold subject to a recorded declaration of restrictions and deed of trust as described in 15-82.050(a), and prohibit sales or transfers of the property except with the written consent of the City and at the lowest purchase price listed in subpart (a) above. The declaration of restrictions shall also contain any other provisions considered necessary by the City to implement the BMR program.

15-82.060 Alternative mitigations.

- (a) The basic objective standard of the program is the creation of affordable housing integrated on-site in market-rate residential developments. As an alternative to building the affordable housing units on-site, developers of market-rate residential projects may submit a request to meet their BMR program obligations through other means, such as the dedication of land, the provision of units as part of a different project in the City, or other alternatives together with evidence that the means proposed will further affordable housing opportunities in the City to

a greater extent than providing units on-site based on the standards in this Article and the BMR program.

- (b) Alternative mitigations may only be approved by the City Council and only if the City Council determines, in its independent judgement, that alternative proposed will further affordable housing opportunities in the City to a greater extent than providing units on-site based on the standards in this Article, the City's RHNA goals, and the BMR program.

15-82.070 BMR household eligibility and selection.

- (a) Each tenant of a BMR rental unit or purchaser of a BMR ownership unit shall certify, prior to execution of the lease or close of escrow, in a form acceptable to the City, that the unit being rented or purchased shall be maintained as the household's primary place of residence.
- (b) The BMR guidelines shall establish a procedure for potential tenants and purchasers of BMR units to register with the City and for the City to determine which registrants are eligible for BMR units and select occupants from eligible registrants. Criteria for selection shall include, to the extent allowed under state and federal law, preference for households including at least one person who lives and/or works in the City and/or who is a person with a physical disability and/or a mental disability, as defined in Government Code section 12926(j) and 12926(m), respectively.
- (c) The household income of each renter of a BMR unit shall be verified annually by the City to confirm the household's continued income eligibility for the unit as set forth in the BMR guidelines and other procedures that the City may promulgate.

15-82.080 Waiver.

- (a) Upon an applicant's request, the City Council may waive, adjust, or reduce the requirements of Section 15-82.030(e). The applicant shall bear the burden of demonstrating that the waiver, adjustment, or reduction is necessary to (a) further the purpose of this Article to increase the diversity, supply, and affordability of housing in the City and (b) advance the City's ability to meet its share of regional housing needs as required by state law.
- (b) In considering a waiver request, the City may assume each of the following when applicable:
 - (1) That the applicant will provide the most economical BMR units feasible that meets the requirements of this Article; and
 - (2) That the applicant will benefit from incentives for the project available under the City code and State law.

15-82.090 Enforcement.

- (a) Any individual or household that rents, purchases, or sells a BMR unit in violation of the BMR program requirements or the intent of the BMR program shall be required to forfeit to the City all monetary amounts so obtained in excess of the permitted resale price or rental rates and shall be subject to all penalties authorized by law. If the City undertakes any enforcement action to obtain compliance with the requirements of the BMR program, the City shall be entitled to recover its attorney's fees and staff costs for such enforcement effort.

- (b) No permit, license, subdivision approval or map, or other approval or entitlement for a residential development shall be issued, including without limitation a final inspection for occupancy or certificate of occupancy, until all requirements applicable to the residential development at such time under the BMR program have been satisfied.
- (c) The City Attorney is authorized to enforce the provisions of this Article and all agreements, restrictions, deeds of trust, or similar documents placed on BMR units, by civil action and any other proceeding or method permitted by law.
- (d) Failure of any official or agency to fulfill the requirements of the BMR program shall not excuse any applicant or owner from the requirements of the BMR program.
- (e) The remedies provided for in this Article shall be cumulative and not exclusive and shall not preclude the City from any other remedy or relief to which it otherwise would be entitled under law or equity.

15-82.100 Appeals.

Notwithstanding Article 15-90, appeals of staff determinations based on the administrative requirements of the BMR program as established in this Article and the BMR guidelines must be in the form of a written request by the appellant and addressed to the City Council. The City Council shall make the ruling, and all rulings shall be final. The City may establish cost recovery procedures for appeals.

15-82.110 Effective date.

The provisions of the BMR program shall become effective on May 2, 2025 and apply to all residential development applications received after that date.