

## SECTION 7.4 – BELOW MARKET RATE HOUSING PROGRAM (220-13)

### 7.4.A. PURPOSE

It is the public purpose and policy of the City of Stamford, as outlined in its 2015 *Master Plan*, and the State of Connecticut to achieve a diverse and balanced community with housing available and affordable for households of all income levels. Economic diversity fosters social and environmental conditions that protect and enhance the social fabric of the City and are beneficial to the health, safety and welfare of its residents and to the environmental quality and economy of the region. In addition to the City's other affordable housing strategies, the Below Market Rate ("*BMR*") Housing Program aims at creating mixed-income communities in new developments.

### 7.4.B. AUTHORITY

These regulations are enacted under the authority of the Charter of the City of Stamford and Section 8-2(i) of the Connecticut General Statutes.

### 7.4.C. STANDARDS

#### 7.4.C.1. Standards for All BMR Units

##### a. BMR Units Required.

- (1) All new residential developments with ten (10) or more Dwelling Units, or conversions of non-residential floor area to residential floor area generating ten (10) or more units, or additions, expansions or conversions to existing residential and mixed-use buildings that increase the total number of residential units in such buildings to ten (10) or more units, shall permanently create and deed restrict the number of rental or for sale *BMR Units* as specified in Subsections 7.4.C.2 and 7.4.C.3 below, notwithstanding any provision of these Regulations to the contrary.
- (2) For any *Substantial Renovation or Alteration* of existing rental residential properties having ten (10) or more dwelling units prior to the renovation or upgrade and which have less than 5% *BMR Units* on-site (and for which no alternative means of meeting the *BMR* requirement pursuant to Subsection 7.4.D was made), there shall be a *BMR* requirement of 5% of all units existing following any such work ("*Rehab Units*"), affordable to Households at 65% of the *AMI*. Such *Rehab Units* shall comply with this Section 7.4; provided, however, that the applicant may make a fee-in-lieu payment pursuant to Section 7.4.D.3 without having to receive *Special Permit* approval by the Zoning Board. If, as part of such work, new units are developed, then such new units shall be subject to all of the requirements of this Section 7.4. (223-22)
- (3) All housing for the Elderly, including independent living, shall provide at least five percent

- (5%) of all units as *BMR Units*. Memory care, assisted living, nursing home or hospice care units shall be excluded from this *BMR* requirement. Such developments may, however, make a fee-in-lieu payment pursuant to Section 7.4.D.3 without having to receive *Special Permit* approval by the Zoning Board. For the purpose of calculating the amount of the fee-In-lieu payment, common and program areas, e.g., dining or recreational facilities, shall not be considered. All monies generated by this provision shall be used exclusively for the production of Affordable Housing for the Elderly.
- b. **Pricing of BMR Units for Sale or Rent.** Studios shall be priced based on the *Area Median Income (AMI)* for families of 0.9 persons; one-bedroom *BMR Units* shall be priced based on the *AMI* for families of one and one-half persons; two-bedroom *BMR Units* shall be priced based on the *AMI* income for families of three persons; and three-bedroom *BMR Units* shall be priced based on the *AMI* for families of four and one-half persons, all at the criteria income levels established in Table 7.4.1 (for rental units) and Subsection 7.3.
- c. **Policies and Guidelines for BMRs Units.** *BMR Units* shall be designed, constructed, sold or rented, managed and controlled as to resale in accordance with such other written administrative policies, definitions and guidelines as officially adopted by the Zoning Board and/or the City of Stamford, as amended from time to time.
- d. **BMR Units Equivalent to Market Rate Units.** *BMR Units* shall be constructed with floor area, layout, interior and exterior finishes, fixtures and amenities comparable to the market rate units within the development.
- e. **Location of BMR Units within Buildings.** *BMR Units* shall be dispersed evenly throughout the development and must not be concentrated on particular floors, within particular sections of a Building, or within particular buildings in a development with multiple buildings. There shall be no separate access points for market rate and *BMR Units*.
- f. **Equal Access to Amenities for BMR Residents.** Residents of *BMR Units* shall have the same access to common areas, facilities, amenities and services as residents of Market-Rate Units in the project, including but not limited to, outdoor spaces, amenity spaces, storage, and other resident services. There shall be no fees for the use of a *Parking Space* for one vehicle and bicycle facilities for residents of *BMR Units*. If a *BMR* household owns more than one vehicle, the same parking fees as for the market rate tenants or owners shall apply for all vehicles in excess of the first vehicle. *BMR* tenants and owners shall not be charged higher or additional fees than market-rate renters or owners, and free access to amenities for market rate owners or renters must be free for *BMR Unit* renters or owners.
- g. **BMR Unit Size Proportional to Market Rate Unit Size; Alternate Unit Mix.** The number of *BMR Units* defined by size and number of bedrooms shall be proportionate to the overall number of units in the project defined by size and number of bedrooms. Applicants may request, by *Special Permit* from the Zoning Board, unit sizes differing from the overall distribution of units based on the following ratios; provided, however that the *Floor Area* of

the *BMR Units* provided is equal to or greater than the total *Floor Area* of *BMR Units* that would otherwise be required pursuant to these Regulations. All subsequent changes to the unit mix shall be subject to Administrative Approval by the Zoning Board.

**Base: 2-Bedroom Unit**

One 2-Bedroom Unit equals three Studio units

One 2-Bedroom Unit equals two 1-Bedroom units

One 2-Bedroom Unit equals one 2-Bedroom unit

One 2-Bedroom unit equals 0.75 3-Bedroom units.

- h. **Rental and Ownership BMR Units in the Same Development.** For projects with a combination of rental and owner-occupied Dwelling Units, the ratio of rental to owner-occupied *BMR Units* shall be equal to the ratio of rental to owner-occupied units in the Development.
- i. **All BMR Units to be Provided On-Site.** All required *BMR Units*, except fractional units, shall be provided on-site unless the Zoning Board, in its sole discretion, approves an Alternative Method of Compliance, pursuant to Section 7.4.D. below.
- j. **Fractional BMR Units.** For fractional *BMR Units* of less than one unit, a fee-in-lieu payment may be made pursuant to Section 7.4.D.3 without having to receive *Special Permit* approval by the Zoning Board.
- k. **Equivalency of Affordability Levels.** The Zoning Board, in its sole discretion, may determine the affordability level for the required *BMR Units* between the range of 50-80% *AMI* based on the following equivalencies and shall take into account the recommendations of the City's Affordable Housing Plan, if such Plan exists.

**Base: One (1) BMR Unit at 50%;**

One (1) *BMR Unit* at 25% *AMI* equals 2.00 units at 50% *AMI*;

One (1) *BMR Unit* at 30% *AMI* equals 1.56 units at 50% *AMI*;

One (1) *BMR Unit* at 35% *AMI* equals 1.43 units at 50% *AMI*;

One (1) *BMR Unit* at 40% *AMI* equals 1.3 units at 50% *AMI*;

One (1) *BMR Unit* at 45% *AMI* equals 1.15 units at 50% *AMI*;

One (1) *BMR Unit* at 60% *AMI* equals 0.70 units at 50% *AMI*;

One (1) *BMR Unit* at 65% *AMI* equals 0.60 units at 50% *AMI*; and

One (1) *BMR Unit* at 80% *AMI* equals 0.40 units at 50% *AMI*

Applicants may request, by *Special Permit* approval for the Zoning Board, any of the above affordability levels.

- l. **Premium Floor Area Only When BMRs Provided On-Site.** Notwithstanding anything to the contrary in these Regulations, no development shall receive *Premium Floor Area* unless all *BMR Units*, excluding fractional *BMR Units* as defined in Subsection C.1.k., are provided on-site at the Development.

m. **Premium Floor Area Excluded from BMR Calculations.** Premium Floor Area for *BMR Units* provided on-site, as defined in the respective District Regulations in Sections 4 and 9 and/or in Appendix B, Table II, shall be excluded from *BMR* requirements,

n. **Replacement of Subsidized, Affordable Housing and Existing Market Rate Affordable Housing Units.**

(1) **Replacement of Subsidized or Affordable Housing Units:** If, as part of a redevelopment, any Subsidized or Affordable Housing units are lost, then, in addition to the new *BMR Units* required, applicant shall replace all Subsidized and Affordable units lost at a ratio of 1:1 at the same affordability levels as the Subsidized and Affordable units lost; provided, however, the following rules shall apply:

(a) If the number of Subsidized and Affordable units lost is 10% or less of the total number of new units, then the *BMR* requirement shall be the base requirement for the district plus the percentage of units lost.

*Example:*

*Proposed new development 100 units, 10% BMR requirement = 10 BMR units)*

*Affordable Units lost: 2 (=2% of total new units)*

*BMR requirement = 12% (10% base plus 2% units lost) = 12 units*

(b) If the number of Subsidized and Affordable units lost is greater than 10% but less than 20% of the total number of new units, then the *BMR* requirement, including replacement of subsidized units lost, shall be 20%

*Example:*

*Proposed new development 100 units, 10% BMR requirement = 10 BMR units)*

*Affordable units lost: 13 (=13% of total new units)*

*BMR requirement = 20% (number of units lost between 10% and 20% ) = 20 units.*

*Note that this is less than the 23(10+13) units which would be required if 1:1 replacement of lost units was required.*

(c) If the number of Subsidized and Affordable units lost is 20% or more of the total number of new units, then the *BMR* requirement shall be 5% of the new units plus the number of units lost

*Example:*

*Proposed new development 100 units, 10% BMR requirement = 10 BMR Units)*

*Subsidized units lost: 22 (=22% of total new units)*

*BMR requirement = 27 units; replace 22 units lost plus 5% of the total proposed (=5 units)*

(2) **Replacement of Market Rate Affordable Housing Units:** If, as part of a redevelopment, any Market Rate Affordable Housing units are lost, then, in addition to the new *BMR Units* required for such district, applicant shall replace all *Market Rate Affordable Units* lost with

*BMR Units* affordable at 65% *AMI* at a ratio one additional replacement unit for every two *Market Rate Affordable Units* lost; provided, however, that the applicant shall not be required to provide replacement units exceeding 20% of the total number of units of the redevelopment .

*Examples:*

(a) *Market Rate Affordable units pre-redevelopment: 8;*

*Proposed development: 100 units; BMR requirement 10% = 10 BMR Units*

*8 Market Rate Affordable units lost = 4 replacement units required:*

*BMR requirement =14 units (10 new BMR Units and 4 replacement BMR Units)*

(b) *Market Rate Affordable Units pre-redevelopment: 24;*

*Proposed development: 100 units; BMR requirement 10% = 10 BMR Units*

*Market Rate Affordable units lost must be replaced at a ratio of 2:1 but no more than 20% of the proposed total of units created;*

*12 Market Rate Affordable units need to be replaced, however, BMR is capped at 20% BMR requirement = 20 units*

- (3) Where Subsidized Affordable or *Market-Rate Affordable Housing Units* are replaced with non-residential uses, a fee-in-lieu payment shall be made for such lost units. Said fee-in-lieu payment shall be calculated based on 10% of the proposed non-residential Gross Floor Area and the current per square foot fee for “All other districts” in Table 7.4.2.
- o. **Accounting for Assets.** Return-on-Assets Income shall be imputed by excluding the first \$5,000 of assets and multiplying the value of the remaining assets by the HUD passbook rate as reported by Charter Oak Communities. Net Household Assets shall not exceed \$100,000 at the time of initial application to lease or purchase a *BMR Unit* and at the time of annual income recertification.
- p. **Preference for Stamford Residents.** Preference for 50% of *BMR Units* shall be given to persons living or working in the City of Stamford.
- q. **Phased Development.** Where a project is constructed in phases, the required number of *BMR Units* shall be satisfied at each phase of the development, unless the Zoning Board, by *Special Permit*, approves a different procedure.

#### 7.4.C.2. Standards for Rental BMR Units

- a. *BMR Units* offered for rent shall be restricted to a maximum annual rent, inclusive of all rent, parking for one car and basic utilities except telephone and cable, fees and taxes not to exceed 30% of the criteria family income, according to unit type as set forth above in Subsection 7.4.C.1.b.
- b. Rental restrictions shall remain in full force and effect for so long as the *Building* or development exists, and shall be administered in accordance with written guidelines as adopted

and periodically revised by the Zoning Board.

- c. In all rental developments specified in Subsection 7.4.C.1.a above, *BMR Units* shall be made available at the percentages and affordable levels (as percentage of the *AMI*) as set forth in Table 7.4.1:

**Table 7.4.1.**

Zoning District	Percentage of units in developments with 10 or more units to be permanently dedicated as <i>Below Market Rate Rental Dwelling Units</i>	
	% of all units <sup>1)</sup>	Affordability level (% of <i>AMI</i> )
TCD-D	12%	50%
MR-D (total of 12%)	5%	25%
	4%	50%
	3%	65%
V-C (total of 12%)	6%	50%
	6%	65%
All other Districts	10%	50%
Rehab Units	5%	65%
Housing for the Elderly	5%	50%

<sup>1)</sup> Excluding units developed with Premium FAR.

- d. All renters of *BMR Units* shall be recertified annually to assure that they continue to meet the respective maximum income requirements. If, upon recertification, a household exceeds the maximum income by more than 10%, said household shall vacate said unit within three months of the date of the recertification.
- e. Renters of *BMR Units* under the BMR Housing Program established under this Section 7.4. shall only be permitted to apply for a different unit in this program if they no longer meet the requirements of the BMR unit assigned to them, for example because of a change in family size or income.

**7.4.C.3. Standards for Ownership BMR Units**

- a. In all home-ownership developments specified in Subsection 7.4.C.1.a above, 50% of all required *BMR Units*, excluding units developed with *Premium FAR*, shall be made available for sale to Eligible Households earning 65% or less of the *AMI*, and an additional 50% to Eligible Households earning 80% or less of the *AMI* according to unit type as set forth above in Subsection C.1.b.
- b. *BMR Units* offered for sale (both the first sale and all subsequent resales) shall be limited to a

selling price that is affordable to a purchaser with an income not exceeding the family income defined in Subsection 7.4.C.3.a, according to unit type as set forth above, based on industry-standard mortgage underwriting guidelines, and based on prevailing interest rates and a three percent (3%) down payment. The initial sale price for a *BMR Unit* shall be set at a level where monthly housing cost (which shall include debt service at prevailing interest rates for a 30-year conventional mortgage, down payment of 3%, condominium or related common charges, real estate taxes, and parking fees for one vehicle) does not exceed thirty percent 30% of household income, based on a household size of one (1) person per bedroom.

- c. *BMR Units* offered for sale shall remain subject to resale restrictions for so long as the Building or development exists with a selling price that is affordable to a purchaser with an income not exceeding the family income defined in Subsection 7.C.3.a and based on the guidelines set forth in Subsection 7.C.3.b. *BMR* sale and resale requirements shall be administered in accordance with written guidelines as adopted and periodically revised by the Zoning Board, with suitable restrictive covenants in deeds, running with the land and senior to all financing instruments, to carry out and effectuate these obligations.
- d. Should an applicant not be able to sell some or all of the required *BMR Units* within one year of the final Certificate of Occupancy for a *BMR Unit*, the unsold homeownership units may, by Administrative Approval by the Zoning Board, be rented out to Eligible Households earning 50% or less of the *AMI* for a lease term of at least one (1) year. Following expiration of the initial one (1) year lease term, if the applicant finds an eligible buyer other than the renter of a the *BMR Unit*, the developer must grant the current renter at least three months from the date of closing to vacate the *BMR Unit*.

#### **7.4.D. ALTERNATIVE METHODS OF COMPLIANCE**

Pursuant to an application for *Special Permit*, the Zoning Board, at its sole discretion, may approve one or a combination of the alternative methods of satisfying a BMR requirement as provided for below; provided, however, as set forth above, no *Special Permit* approval shall be required for fee-in-lieu payments made for fractional *BMR Units* pursuant to Subsection 7.C.1.k., *Substantial Renovations or Alterations* pursuant to Subsection 7.C.1.a(2) and housing for the Elderly pursuant to Subsection 7.C.1.a(3).

Any proposed alternative method shall demonstrate to the satisfaction of the Zoning Board that the alternative method is desirable and will further affordable housing opportunities in the City to a greater extent than the provision of on-site *BMR Units*, either through the production of a greater number of affordable housing units, larger bedroom size units, or units for families below the required targeted income brackets. The dedication of land shall not be a permitted alternative method of compliance.

**7.4.D.1. Dedication of Existing Units**

A BMR requirement may be satisfied by permanently deed-restricting the rental or sale price of existing Dwelling Units within the City, the form and content of which is acceptable to the Zoning Board and recorded on the land records and senior to all financing instruments. The restriction of such existing units must result in the creation of units that are at a minimum equivalent in value, quality, and size to the on-site *BMR Units* that would otherwise be provided. Such units shall not displace existing deed-restricted Affordable Housing units or Market Rate Affordable Housing units, and must be provided and available prior to issuance of the Certificate of Occupancy for the market rate units in the development.

**7.4.D.2. Off-Site Construction of BMR Units**

A *BMR* requirement may be satisfied through the off-site construction or substantial rehabilitation (also known as a “gut rehab”) of *BMR Units* within the City of Stamford, subject to the following standards:

- a. The location, architectural design and siting of such units shall be equivalent to the market rate units in the development;
- b. Such units shall not displace any existing subsidized or Market Rate Affordable Housing units;
- c. Such units shall be generally consistent with all applicable standards of this section, including but not limited to, value, quality finishes, amenities, unit mix, parking and size of the market rate units in the development; and
- d. Such units must be provided prior to the issuance of a Certificate of Occupancy for the market-rate units in the Development.

**7.4.D.3. Fee-in Lieu Payment**

A *BMR* requirement may be satisfied, in whole or in part, through the payment of a “fee-in-lieu” cash contribution to a City of Stamford fund, or to a non-profit or for-profit organization approved by the Zoning Board, which is dedicated to affordable housing initiatives. Notwithstanding any other provisions of this Section 7.4 to the contrary, the cash contribution shall be determined based on a fee for every square foot of *BMR Gross Floor Area* not realized pursuant to table 7.4.2. All fee-in-lieu payments shall be made prior to the issuance of a Building Permit for the market rate units.

**Table 7.4.2.** (221-11)

Zoning District	Percentage of Gross Residential Floor Area subject to fee	Fee per square foot, 2020
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MR-D, TCD-D	12%	\$200
C-C, G-G, C-L, DW-D, MX-D, R-H, R-HD, SRD-N, SRD-S,	10%	\$200
V-C	12%	\$175
All other districts	10%	\$150
Rehab units	5%	\$125
Housing for the Elderly	5%	\$125

The fee-in-lieu fee per square foot shall be increased automatically on every January 1<sup>st</sup> by no more than the increase of the Construction Cost Index as published by the Engineering News Record with December 2019 as the basis. More frequent increases or increases higher than the Construction Cost Index, or a decrease of the current fee-in-lieu fee, shall require an amendment to these Regulations by the Zoning Board.

#### **7.4.E. MANAGEMENT OF THE BMR PROGRAM**

##### **7.4.E.1. Affordability Plans Required**

All developments requiring the provision of *BMR Units* pursuant to this Section 7.4 shall be accompanied by a management plan (“Affordability Plan”).

For projects requiring *Special Permit*, Site Plan, Zoning Map or Text, Architectural and Site Plan or General Development approval, a draft Affordability Plan shall be submitted and is subject to Zoning Board approval concurrently with these actions. For Affordability Plans as part of as-of-right developments, the draft Affordability Plan is subject to review and approval by the Zoning Board by Administrative Approval prior to issuance of a Building Permit. No final Certificate of Occupancy shall be granted without a complete and approved final Affordability Plan. Minor Modifications to approved Affordability Plans shall be subject to approval to the Land Use Bureau Chief or designee.

##### **7.4.E.2. Contents of the Affordability Plan**

The Affordability Plan shall include the following:

- a. General information about the nature and scope of the development subject to these regulations.
- b. The total number of Market Rate Housing units and *BMR Units* in the development.

- c. The size (number, bedrooms, bathrooms and square footage) for each Market Rate Housing unit and *BMR Unit* in the development.
- d. The combined approximate square footage all *BMR Units* and all Market Rate Housing units without common areas such as hallways, amenity spaces, etc.
- e. The approximate location of each *BMR Unit* within any multifamily residential Structure.
- f. The person or organization responsible for administering the Affordability Plan, including the application procedures and screening criteria to determine the income eligibility of applicants, and reporting and enforcement mechanisms.
- g. Provision for the selection of buyers or tenants and affirmative fair marketing procedures governing the sale or rental of the *BMR Units*.
- h. The pricing of each *BMR Unit* and the basis for their determination, including all fees and common charges associated with the Building, e.g., for parking. Final pricing of rental and ownership *BMR Units* shall be re-determined at the time of issuance of the Certificate of Occupancy, based on changes in the *Area Median Income* and prevailing mortgage interest rates and any changes in the administrative guidelines.
- i. Plans for income verification of tenants and buyers.
- j. Plans for management of *BMR Units*, particularly with respect to maintenance and assurance of long-term affordability. New fees and charges should not make units unaffordable.
- k. Relocation plans for tenants affected by substantial rehabilitation projects.
- l. Timetable for the completion of Market Rate Housing units and *BMR Units* on a pro-rata basis.
- m. Amenities available to tenants and buyers, including tenants and buyers of *BMR Units* and conditions of use, such as fees.
- n. Annual reports demonstrating compliance with the requirements of this Subsection 7.4.E shall be submitted to the Land Use Bureau and the Director of the Department of Social Services for the life of the Building. Such reports shall be submitted no later than January 15 of each year. Failing to submit such report on time shall be considered a Zoning Violation pursuant to the City of Stamford Code Chapter 248 (Zoning), with each day being a separate violation.

The Zoning Board may request additional information in conjunction with its review, and may reject any application not providing the minimum Affordability Plan elements noted above.

#### **7.4.E.3. Administration of the BMR Program by the City or a Third Party**

The City of Stamford may, at the discretion of the Zoning Board and under an agreement acceptable to the City's Law Department, at any time assume management of rental *BMR Units* and the resale of ownership *BMR Units* or delegate such responsibilities to a third party. The City of Stamford may require the applicant or then owner of the Building to pay a reasonable fee to

cover the cost of administration of the *BMR Units*.

#### **7.4.E.4. Section 8 Vouchers**

Section 8 vouchers and use of other local, state or federal programs, subsidies and initiatives to further increase the affordability of *BMR Units* shall only be permitted to accommodate families earning less than 45% of the *AMI*. Under no circumstance shall the total of rent, including the value of the Section 8 voucher or other subsidy, initiative or program, including all rent, common charges basic utilities (with the exception of telephone and cable), parking for one vehicle, fees and taxes exceed the rent for a household earning 50% of the *AMI*.

**SECTION 7.5.** [*deleted*] (220-31)