

Chapter 17.136 - Housing

- 17.136.010 - Purpose of Chapter
- 17.136.020 - Applicability
- 17.136.030 - Housing Mitigation Required for Incremental New Demand and Credit
- 17.136.040 - Housing Impact Mitigation Fees
- 17.136.050 - On-Site Provision of Units
- 17.136.060 - Off-Site Provision of Units
- 17.136.070 - Conveyance of Land
- 17.136.080 - Alternate Housing Mitigation Plan
- 17.136.090 - Residential Projects: Rental permitted if consistent with Costa Hawkins Act
- 17.136.100 - Exemptions from Housing Mitigation Requirements
- 17.136.110 - Time Performance Required
- 17.136.120 - Livability Standards
- 17.136.130 - Eligibility, Continued Affordability

17.136.010 – Purpose of Chapter

The purpose of this Chapter is to:

- A. Encourage the development and availability of housing that is affordable to a broad range of households with varying income levels within the town as mandated by State law, Government Code Section 65580;
- B. Promote the Town’s goal to add to, and preserve the existing stock of workforce housing units within the town;
- C. Mitigate the impacts of market rate residential and non-residential development on the need for workforce housing in the town through the imposition of workforce housing requirements as included in this Chapter; and
- D. Implement the goals, objectives, policies, and programs of the General Plan and Housing Element related to workforce housing.

17.136.020 – Applicability

New development, additions, and conversion of uses from one type to another, that are not exempt pursuant to Section 17.136.100, shall be required to mitigate housing in accordance with the options identified in Sections 17.136.040 through 17.136.080, listed below.

Mitigation Option	Code Section
Housing Impact Mitigation Fees	17.136.040
On-Site Provision of Units	17.136.050
Off-Site Provision of Units	17.136.060

Conveyance of Land	17.136.070
Alternate Housing Mitigation Plan	17.136.080

17.136.030 – Housing Mitigation Required for Incremental New Demand and Credit

A. Mitigation Required for Incremental New Demand. Where a project would replace existing residential, lodging, or non-residential uses on the project site, the project shall only be required to mitigate the incremental new demand of the proposed project (such as an increase in gross commercial or industrial square footage, the net increase in the number of lodging rooms, or the net increase in the number of market rate housing units).

B. Housing Mitigation Credit.

1. Credit for existing uses shall be calculated based on the housing impact mitigation fee(s) applicable to the existing use(s) at the time of submittal of a complete building permit application for reconstruction, replacement, or new construction to which some or all of the credit will be applied.
2. Credit for the provision of housing mitigation above that required by this Chapter shall be determined by the Director.
3. Under previous housing mitigation requirements, housing credits have been calculated based on Full Time Equivalent Employees (FTEEs) and/or Employee Housing Units (EHUs). One FTEE is a full time year round employee. One EHU equals one bedroom and is calculated as fifty eight and one half percent (58.5%) of an FTEE. FTEE and EHU credits may be applied to mitigation requirements identified herein.
4. Unused credits may be sold or transferred to other properties on which a workforce housing obligation is required under this Chapter.

17.136.040 – Housing Impact Mitigation Fees

A. Fee Established. The housing impact mitigation fee (“housing fee”) applicable to each use shall be established by resolution of the Council, in accordance with the provisions of Subsection 17.136.040.G.

B. Director Determination of Category. The Director shall determine the appropriate category for the development, and shall calculate the amount of the housing fee based on the adopted fee schedule, based on the provisions herein.

C. Housing Fee Calculations. Housing fees shall be calculated as follows:

1. New residential developments:

$$\text{Housing fee} = (\text{number of new units}) \times (\text{applicable housing fee for new use})$$

2. New lodging developments:

Housing fee = (number of new rooms) X (applicable housing fee for new use)

3. Non-residential developments that include new construction or addition to existing non-residential space:

Housing fee = (gross square feet of new non-residential space) X (applicable fee by type of use)

4. Conversion of one non-residential use, without addition of new space, to another non-residential use:

Housing fee = [(gross square feet) X (applicable housing fee for new use)] – [(gross square feet) X (applicable housing fee for prior use)]

5. Conversion from a residential use to a non-residential use:

Housing fee = [(gross square feet of new non-residential use) X (applicable housing fee)] – [(number of prior residential units) X (applicable housing fee)]

6. Conversion from a lodging use to a non-residential use:

Housing fee = [(gross square feet of new non-residential use) X (applicable housing fee)] – [(number of prior lodging rooms) X (applicable housing fee)]

D. Individualized Use Determination for Housing Fees. The land use category for a development shall be determined by the Director based on an individualized determination only if:

1. The adopted fee schedule so specifies; or
2. The Director determines that insufficient generalized information is available to permit a determination that the use falls within one of the specified use categories.
3. Any application for a non-residential project where an individualized fee determination is required pursuant to this Section shall be accompanied by information sufficient to enable the Director to make a determination of employee generation or density. The determination of employee generation or density shall be based on: data concerning anticipated employee generation or density for the project submitted by the applicant; employment surveys or other research on similar uses submitted by the applicant or independently researched by the Director; or any other data or information the Director determines relevant. Based on the evidence submitted, the Director shall determine the most similar land use category, or shall establish a mixed fee, as appropriate.

E. Appeal. An applicant may appeal the Director’s fee determination to the Commission according to provisions of Chapter 17.104 (Appeals) of the Municipal Code.

F. Refund or Rebate of Housing Fees Based on Conversion of Use. No refund or rebate of

housing fees previously paid shall be made in the case of conversion from one use with a higher housing fee to one with a lesser housing fee, or conversion from a non-exempt to an exempt use.

G. Housing Fees Established.

1. **Established by Council Resolution.** All housing fees shall be established by resolution of the Town Council.
2. **Methodology.** Housing fees shall not exceed the cost of mitigating the impact of market-rate residential and non-residential projects on the need for workforce housing in the town, based on an approved nexus study. Housing fees shall be established per unit for for-sale transient and non-transient residential uses; per room for lodging uses; and per gross square foot for non-residential uses (office, retail, restaurant, and industrial) and residential additions.
3. **Review and Update.** The Town Council shall periodically review the housing fees for various land uses including residential, lodging and non-residential developments and adjust the fees by resolution. At a minimum the housing fees shall be reviewed and, if appropriate, revised at the time of each Housing Element update. The Town Manager shall prepare a recommendation to the Council for such fee revision.
4. **Use of Housing Fees.** Fees collected pursuant to this Chapter shall be placed in a separate fund of the Town and shall be used only for the purposes of planning for, administering, subsidizing, or developing workforce housing within the Town limits. The Council may set specific direction, consistent with this Subsection, for use of these funds through the Council resolution establishing the fees.

17.136.050 – On-Site Provision of Units

- A. Applicable to Residential Developments.** Transient and non-transient residential ownership developments including condominiums, fractional ownership, residential ownership components of mixed-use projects, and single family or other subdivisions may propose to provide on-site unit(s) to satisfy the housing mitigation requirement for the development. The cost to the developer of such on-site unit(s) shall not be required to exceed the amount of the applicable housing fee pursuant to Section 17.136.040, and calculated as outlined in Subsection 17.136.050.B.5, below.
- B. On-Site Unit Requirements.** The on-site unit(s) required to satisfy housing mitigation for a particular residential ownership development shall comply with the following:
 1. The affordability level(s) of the unit(s) (stated as a proportion of Area Median Income (AMI)) shall comply with those established by Council resolution, which shall be periodically reviewed and updated.
 2. Such units shall be for-sale units, unless the builder/developer chooses the rental

alternative specified in Section 17.136.090 of this Chapter.

3. The proposed on-site units shall meet or exceed the livability and design standards described in Section 17.136.120 unless a waiver or modification to those standards has been approved by the Town.
4. If the total cost to the developer to mitigate on-site would result in a fraction of a dwelling unit, the proportionate share of the housing fee described in Section 17.136.040 shall be paid for the fraction.
5. If the total cost to the developer to mitigate on-site exceeds the amount of the applicable housing fee pursuant to Section 17.136.040, the developer shall be assigned housing mitigation credit for the additional cost consistent with Section 17.136.030.B. and according to the following:

Total cost to developer (for-sale unit) = Total cost of construction of on-site unit(s) less unit(s) sales price(s) at target AMI level(s).

Total cost to developer (rental unit) = Total cost of construction of on-site unit(s) less net present value(s) of rents at target AMI level(s) over 30 years based on a documented cap rate.

Total cost of construction includes land cost, direct costs (e.g., labor and materials), indirect or “soft” costs (e.g., architecture, entitlement, marketing, etc.) specifically associated with the on-site mitigation unit(s).

The calculation of total cost shall include only those costs for meeting Workforce Housing Amenity and Design Standards. The developer shall provide a pro-forma document of those costs.

C. Application Requirements. If on-site mitigation housing is proposed, the applicant shall provide the following information for Town review, prior to project approval:

1. Identification of the location within the project of the mitigation unit(s).
2. A description and floor plan of the proposed unit(s) including habitable square footage, number of bedrooms, living areas, and proposed resident amenities. Such information shall be provided in sufficient detail so as to permit an evaluation of the units’ conformance with the livability and design criteria set forth in Section 17.136.120.
3. The proposed timeframe for development of the mitigation unit(s), including number of units to be provided within each phase of multi-phase projects.
4. The proposed sales price, or rental price if applicable (refer to Section 17.136.090), and calculation method or basis for establishing such price).

5. Documentation demonstrating the cost to the developer of the provision of the on-site unit(s) through a standard pro forma statement.

D. Calculation of Project Density. On-site housing units provided pursuant to this Section shall not count towards the calculation of total project density (i.e., rooms per acre or units per acre) if all of the following conditions apply:

1. The project fully satisfies its housing mitigation requirements on-site by providing on-site housing units consistent with the target AMI established by Council resolution;
2. The project is located in the Downtown, Old Mammoth Road, Mixed Lodging/Residential, or Residential Multi-Family 2 zones, or in an area subject to a specific plan or master plan that permits such an exclusion;
3. The applicable Floor Area Ratio (FAR) limit is not exceeded;
4. The project has not applied for or received a State housing density bonus pursuant to Chapter 17.140; and
5. Findings can be made in conjunction with project approval that the total project density or intensity, considering all uses, would meet all applicable design and development standards of the Municipal Code, would not result in significant and unavoidable environmental impacts, and would be compatible with surrounding uses.

In all other cases, total project density, inclusive of provided on-site housing units, shall not exceed the maximum density for the zone in which the project is located, except as permitted by the provisions of Chapter 17.140 (Affordable Housing Density Bonuses and Incentives).

Pursuant to General Plan Policy L.2.D and Housing Element Action H.1.C.1, for housing development projects where all units are deed restricted for workforce housing, a density bonus may be granted in addition to any State housing density bonus pursuant to Chapter 17.140, up to a combined bonus of twice the density identified for the designation in which the project is located. The findings identified in Subsection D.4, above, shall be made by the Review Authority prior to granting a density bonus pursuant to this Subsection.

17.136.060 – Off-Site Provision of Units

- A. Off-Site Housing.** Off-site housing units may be proposed within the Town limits to satisfy the housing mitigation requirement for the development. Off-site housing units may include any combination of new dwelling units, new dwelling units created in existing structures, or acquisition and conversion of existing market-rate to below market rate (BMR) units. The cost to the developer of such off-site unit(s), including acquisition and rehabilitation, shall not be required to exceed the amount of the applicable housing fee pursuant to Section 17.136.040, and calculated as outlined in Subsection 17.136.060.B.6, below.

B. Off-Site Unit Requirements. The off-site unit(s) required to satisfy housing mitigation for a particular development shall comply with the following:

1. For new construction of off-site units, such units shall be within the Downtown, Old Mammoth Road, Mixed Lodging and Residential, Residential Multi-Family 2, Resort, or Specific Plan Zones.
2. Units acquired shall not be currently serving as long-term (i.e., non- transient) rental units.
3. The affordability level(s) of the unit(s) (stated as a proportion of Area Median Income (AMI)) shall comply with those established by Council resolution, which shall be periodically reviewed and updated.
4. The proposed off-site units shall meet or exceed the livability and design standards described in Section 17.136.120 to the extent feasible, unless a waiver or modification to those standards has been approved by the Town.
5. If the total cost to the developer to mitigate off-site would result in a fraction of a dwelling unit, the proportionate share of the housing fee described in Section 17.136.040 shall be paid for the fraction.
6. If the total cost to the developer to mitigate off-site exceeds the amount of the applicable housing fee pursuant to Section 17.136.040, the developer shall be assigned housing mitigation credit for the additional cost consistent with Section 17.136.030.B. and according to the following:

Construction of New Off-Site Units

Total cost to developer (for-sale unit) = Total cost of construction of off-site unit(s) less unit(s) sales price(s) at target AMI level(s).

Total cost to developer (rental unit) = Total cost of construction of off-site unit(s) less net present value(s) of rents at target AMI level(s) over 30 years based on a documented cap rate.

Total cost of construction includes land cost, direct costs (e.g., labor and materials), indirect or “soft” costs (e.g., architecture, entitlement, marketing, etc.) specifically associated with the off-site mitigation unit(s).

The calculation of total cost shall include only those costs for meeting Workforce Housing Amenity and Design Standards. The developer shall provide a pro-forma document of those costs

Acquisition and Rehabilitation of Existing Off-Site Units

Total cost to developer (existing for-sale unit) = Total cost of acquisition and

rehabilitation of off-site unit(s) less unit(s) sales price(s) at target AMI level(s)

Total cost to developer (existing rental unit) = Total cost of acquisition and rehabilitation of off-site unit(s) less rental unit(s) net present value(s) of rents at target AMI level(s) over 30 years based on a documented cap rate.

Total cost of acquisition and rehabilitation includes purchase price, direct costs (e.g., labor and materials), indirect or “soft” costs (e.g., architecture, permits, marketing, etc.) specifically associated with the off-site mitigation unit(s).

6. If the off-site housing units will not be constructed or otherwise secured concurrently with the market-rate units, the builder shall propose the security to be provided to the Town to ensure the timely construction or acquisition of said units, including evidence of ownership, control or other legally-binding commitment to required sites, and evidence that funding has been secured for the off-site units. Such security shall be provided prior to issuance of any certificates of occupancy for the market-rate units.

C. Application Requirements. If off-site mitigation housing is proposed, the applicant shall provide the following information for Town review, prior to project approval:

1. Identification of the location(s) of the mitigation unit(s).
2. A description and floor plan of the proposed unit(s) including habitable square footage, number of bedrooms, living areas, and proposed resident amenities. Such information shall be provided in sufficient detail so as to permit an evaluation of the units’ conformance with the livability and design criteria set forth in Section 17.136.120.
3. The proposed timeframe for development or acquisition and rehabilitation of the mitigation unit(s).
4. The proposed sales price or rental price (if applicable refer to Section 17.136.090), and calculation method or basis for establishing such price.
5. Documentation demonstrating the cost to the developer of the provision of the off-site unit(s) through a standard pro forma statement.

D. Deed Restricting Existing Market-Rate Ownership Unit(s) within the Town. As a condition of project approval, when the deed restriction of existing market-rate unit(s) is proposed, the applicant must describe the specific unit(s) to be deed restricted. Applicants must demonstrate:

1. The long term affordability of the proposed unit(s) is adequately protected, considering issues including but not limited to long term maintenance and homeowner’s assessments.

2. The targeted income level(s) of the deed restricted units.
3. If under the jurisdiction of a homeowner’s association, that the project’s governing documents, if any, do not prohibit the deed restrictions.
4. Provisions to ensure that any unit(s) so restricted meets long term standards for maintenance and affordability.

The Town may request additional information about the proposed unit(s) as reasonable to make such a determination.

17.136.070 – Conveyance of Land

A. Criteria for Conveyance of Land. The dedication of land may be proposed satisfy the housing mitigation requirement, if it can be determined by the Town that all of the following criteria have been met:

1. Marketable title to the site is transferred to the Town, or an affordable housing developer or non-profit approved by the Town, no later than the approval of a final map or issuance of first building permit, pursuant to an agreement between the market-rate project developer and the Town, and such agreement is in the best interest of the Town.
2. The site has General Plan and zoning designations that authorize residential uses.
3. The site is suitable for development of workforce units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site.
4. Infrastructure to serve the dedicated site, including but not limited to streets and public utilities, must be available at the property line, or will be made available prior to issuance of certification of occupancy.
5. Environmental review of the proposed site has been completed to allow full disclosure for the conveyance of the proposed site, including analysis of the site for the presence of hazardous materials and geological review for the presence of geologic hazards and that such hazards are or will be mitigated to the satisfaction of the Town prior to acceptance of the site by the Town.
6. The value of the site upon the date of conveyance is equal to or greater than the applicable housing fee for the market-rate development. Fair market value shall be determined preliminarily at the time the market-rate development is submitted to the Town for review. Final determination of fair market value shall be made by a licensed California appraiser prior to building permit issuance and shall be net of

any real estate commission for the conveyance of the land.

7. If the value of the site upon the date of conveyance exceeds the amount of the applicable housing fee pursuant to Section 17.136.040, the developer shall be assigned housing mitigation credit for the different in the value of the site upon conveyance and the applicable housing fee, consistent with Section 17.136.030.B.
8. The land is located per the provisions of 17.136.060.B.1.

B. Disposition of Land by the Town. The Town shall not be required to construct BMR units on the site dedicated to the Town, but may sell, transfer, lease, or otherwise dispose of the dedicated site in order to facilitate the construction of those units and only when a clearly demonstrable greater housing benefit would be achieved as determined by Council. Any funds collected as a result of sale, transfer, lease, or other disposition of sites dedicated to the Town shall be deposited into the Town's Housing Mitigation Fund and the funds and interest accrued shall remain in the fund and shall be used pursuant to Subsection 17.136.040.G.4.

C. Conveyance of Development-Ready Lots within the Project Site. The builder or developer may dedicate development-ready lots within the project site in compliance with the provisions of 17.136.050. All such conveyed lots shall be part of an approved final subdivision map and have completed utility connections and roadway improvements at the time of conveyance so as to be development ready. Such conveyance shall be subject to the criteria in Section 17.136.070.A.

17.136.080 – Alternate Housing Mitigation Plan

Projects that are required to mitigate housing and propose to utilize an alternative method of mitigation not identified herein, may propose an Alternate Housing Mitigation Plan (AHMP) subject to approval by the Town, based on the following provisions:

- A. Application.** An AHMP shall be submitted at time of the application for first approval associated with the project. The application shall include:
1. A calculation of the housing mitigation requirements generated by the project, as defined herein.
 2. A description of the proposal by which the housing mitigation requirement is to be satisfied.
 3. An analysis demonstrating that the AHMP provides housing mitigation at a similar value or cost, number and type of housing units, and level of affordability as other methods outlined in Sections 17.136.040 through 17.136.070.
 4. A description of how the AHMP is in conformance with the Town's approved Housing Strategy.
 5. Any other information determined relevant to the application by the Director.

- B. Early Consultation.** Prior to submitting an application for an AHMP, the applicant should hold preliminary consultations with the Director to provide the applicant information and guidance.
- C. Approval.** The Review Authority may approve, conditionally approve, or reject any alternative proposed by a builder/developer as part of an AHMP. Approval or conditional approval shall be based on the conformance to this Chapter and applicable Council resolutions, including the resolution establishing the target AMI.

17.136.090 – Residential Projects: Rental permitted if consistent with Costa Hawkins Act

- A. Rental Housing Alternative.** As an alternative to providing for-sale mitigation units on-site pursuant to Section 17.136.050, an applicant may propose to provide some or all of the mitigation units as BMR rental units restricted to occupancy by households at the target proportion of AMI. The target AMI shall be established by Council resolution. To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the Town may only approve such a proposal if the applicant agrees in a rent regulatory agreement with the Town to limit rents in consideration for a direct financial contribution or a form of assistance specified in Section 65915 of the Government Code (State Density Bonus Law).
- B. Rental Regulatory Agreement Provisions.** The rent regulatory agreement with the Town shall include provisions for sale of workforce units, including compliance with Section 17.52.110, Condominium Conversions, and relocation benefits for tenants of the workforce units if the owner of the residential project later determines to offer any workforce units in the residential project for sale. If dwelling units in the residential project are later sold at market rate, the applicant shall pay the specified housing fee(s) described in Section 17.136.040, as applicable or other mitigation consistent with this Chapter. If dwelling units are later sold at BMR, continued affordability of such units shall be assured through deed restrictions or other document acceptable to the Director, and include all other relevant requirements as noted in Section 17.136.130.

17.136.100 – Exemptions from Housing Mitigation Requirements

The following development types are exempt from the housing mitigation requirements set forth in this Chapter:

- A.** Any non-residential development where it can be determined, by the Director, that the project would not contribute new demand for employment or housing within the community (e.g., replacement of an existing use or facility or addition of non-habitable square footage such as storage) or would generate no more than one total new employee.
- B.** Additions to single family homes and multi-family units in any zone.
- C.** Multi-family projects of four or fewer units in the Residential Multi-Family 1 Zone, where the average habitable area per unit would not exceed 1,300 square feet.

- D. Live-work units.
- E. Legally-permitted secondary residential units.
- F. Non-transient market-rate rental apartments.
- G. Rental or for-sale units that are deed restricted to workforce housing in any zone.
- H. Any development operated by a non-profit or social services organization to provide food storage, meal service, and/or temporary shelter to the homeless.
- I. Residential care and assisted living facilities.
- J. Subdivision of property is exempt. Applicable housing fees shall be assessed at time of building permit issuance.

17.136.110 – Time Performance Required

- A. No certificate of occupancy shall be issued for any market-rate unit or development subject to the requirements of this Chapter until the permittee has:
 - 1. Complied with housing mitigation requirements specified in Sections 17.136.040 to 17.136.070;
 - 2. Received certification from the Director that the permittee has met, or made arrangements satisfactory to the Town to meet, an alternative requirement as specified in Section 17.136.080; or
 - 3. Received Director approval to modify the timing requirements to accommodate phasing schedules, model variations, or other appropriate factors. At the discretion of the Director, a form of security (e.g., surety bond, cash-equivalent security, legally-binding commitment, or other form approved by the Director) may be required to approve a modification of the timing requirements.
- B. No final inspection for occupancy for any market-rate unit in a for-sale project shall be completed until the permittee has complied with Section 17.136.110.A.

17.136.120 – Livability Standards

The following livability standards shall apply to all housing mitigation units developed pursuant to the requirements of the Municipal Code. The intent of these requirements is to ensure that developers of housing mitigation units build units that meet minimum standards of square footage and amenities necessary for households living and working in Mammoth Lakes.

- A. **Distribution of Units.** Housing mitigation units shall be distributed throughout a project to the extent feasible, and, where units at multiple levels of affordability are proposed, such units shall also be distributed both throughout the project and in relationship to one another to the extent feasible.

- B. Size of Units.** Housing mitigation units shall meet minimum size requirements for square footage and number of rooms. It is the Town’s desire to achieve comparability of average size and number of rooms of housing mitigation units and market-rate units to the extent feasible.
- C. Minimum Square Footage.** Housing mitigation units shall meet the following minimum square footage requirements, exclusive of garages, decks and balconies, as follows:
1. A studio unit shall be no less than 450 square feet
 2. A one (1) bedroom unit shall be no less than 650 square feet
 3. A two (2) bedroom unit shall be no less than 900 square feet
 4. A three (3) bedroom unit shall be no less than 1,150 square feet
 5. A four (4) bedroom unit shall be no less than 1,350 square feet
- D. Amenities and Design Standards.** Housing mitigation units shall meet minimum amenity and design standards adopted by Council resolution. These standards may be revised, as needed, to meet changing workforce housing needs and housing development practices and technologies. The amenities and design standards shall address minimum requirements for:
1. Kitchen, bathroom, laundry, and other appliances and fixtures, including appliance and fixture energy and water efficiency standards;
 2. Minimum kitchen cabinet, closet, and other storage space;
 3. Dining area;
 4. Number and dimensions of bedrooms;
 5. Number of bathrooms, bathroom fixtures, and amenities;
 6. Sound insulation and other noise attenuation;
 7. Quality and external appearance of construction materials and finishes;
 8. Comparability of project amenities for occupants of housing mitigation units relative to market-rate units (except as specified in Chapter 17.140); and
 9. Convenient access to private or common outdoor space that is provided in conformance with Section 17.52.210 (Multi-Family Residential Projects).
- E. Request for Waiver or Modification of Livability Standards.**

1. A developer may submit a request for a waiver or modification of one or more of the livability standards based on site- or project-specific conditions that would make strict compliance with that standard infeasible or impractical. Specifics regarding the allowable waivers and deviations from standards shall be described in the Council resolution for amenity and design standards identified in Subsection 17.136.120.D. Agreement to any such concession shall be made at the discretion of the Review Authority.
2. In the case of off-site units provided through acquisition and rehabilitation of existing unit(s), particularly when such units are located within an existing larger development of market-rate units, strict adherence to standards for interior room size and configuration, noise insulation, number of bathrooms, and common areas used by all residents of the project shall only be required to the extent feasible based on the existing characteristics and location of the unit being acquired. Such a determination shall be made by the Director.

17.136.130 – Eligibility, Continued Affordability

A. Eligibility for Below Market Rate Units (owner-occupied and rental units)

1. No household shall be permitted to occupy a BMR unit, or to purchase a BMR unit for owner occupancy, unless the Town or its designee has approved the household's eligibility. If the Town or its designee maintains a list of eligible households, households selected to occupy such units shall be first selected from that list to the extent provided in the workforce housing agreement, rent regulatory agreement, or resale restrictions.
2. Any household which occupies a rental BMR unit or purchases a BMR unit shall occupy that unit as its principal residence and shall not lease or sublease to a different party, unless allowed in special circumstances as documented in the deed restriction.

B. Continued Affordability Requirements (owner-occupied and rental units). Prior to the issuance of certificates of occupancy for BMR units provided in accordance with this Chapter, resale restrictions, deeds of trust, rent regulatory agreements, and/or other documents, as appropriate, all of which must be acceptable to the Director and Town Attorney and consistent with the requirements of this Chapter, shall be recorded against parcels or units having such BMR units and shall ensure that each BMR unit remains affordable to the same income level for a minimum of 55 years for rental units and a minimum of 60 years for ownership unit years. At a minimum agreements provided in accordance with this Section shall provide:

1. A provision to provide the Town or its qualified designee the continuing right-of-first-refusal to purchase or lease any or all of the designated dwelling units at the appraised value of the unit or the BMR value, whichever is less, subject to the resale restriction;

2. A covenant stating that the developer or successors-in-interest shall not assign, lease, rent, sell, sublet, or otherwise transfer any interests for the designated units without the written approval of the Town or its designee;
3. That the Town or its designee shall have the authority to enter into other agreements with the developer, or purchasers of the designated dwelling units, to ensure that the required dwelling units are continuously occupied by eligible households for the agreed to affordability period;
4. Provisions, in a form satisfactory to the Town, for the enforcement of owner or developer compliance. Any default or failure to comply may result in foreclosure, specific performance, or withdrawal of the certificate of occupancy;
5. That in any action taken to enforce compliance with the deed restrictions, the Town Attorney shall, if compliance is ordered by a court of competent jurisdiction, take all action that may be allowed by law to recover all of the Town's costs of action including legal services; and
6. That compliance with the agreement will be monitored and enforced in compliance with the measures included in the agreement.

C. Initial and Continued Affordability: Owner-Occupied Units. In addition to the minimum requirements set forth in Subsection B, the developer shall agree to the following measures to assure the initial and on-going affordability of required BMR units:

1. **Initial Sales Price for Below Market Rate Units.** The initial sales price of a for-sale BMR unit shall be set by the Town or its designee at the time a building permit is issued for the unit, so that the eligible household will pay an Affordable Ownership Cost. The initial sales price shall be based on the developer's estimate of homeowners association dues, if any, the Town's assumptions for interest rates and other factors, and the methodology or formula for calculating sales prices contained in the Council resolution. The Town shall provide the developer with an estimate of the initial sales price for the BMR units at an earlier date if so requested by the developer in writing. After the building permit is issued, the initial sales price may be adjusted by the Town due to changes in market factors upon written request by the developer no less than 90 days prior to marketing of the BMR units.
2. **Resale Restrictions.** Documents to assure continued affordability shall be recorded against the property in accordance with the provisions of Subsections A and B, above, and the following concerning resale restrictions:
 - a. Terms and conditions concerning the resale of the units shall be specified as necessary to ensure their continuing affordability. Such requirements may include, but are not limited to:
 - i. Limits on resale price, based on an appropriate calculation method.

- ii. Provisions offering units for resale to the Town or its designee, and/or which limit resale to households determined to be eligible for workforce units by the Town in compliance with this Section.
 - iii. Monitoring requirements for resale of units, including required notice of intent to sell in a timely manner before the unit is intended to be marketed.
- b. The Town reserves the right to modify or waive recorded resale restrictions at the time of resale, as warranted, based on residential real estate market conditions or economic hardship on the part of the BMR homeowner. A BMR homeowner may request a modification or waiver of resale restrictions by completing a modification/waiver request form provided by the Town.

D. Initial and Continued Affordability: Rental Units

1. **Initial Rents for Below Market Rate Units.** The initial rent of BMR units shall be set by the Town or its designee at least 30 days prior to the marketing of the BMR unit, so that the eligible households will pay an Affordable Rent in accordance with the established affordability level. The initial rent shall be based on the Town's assumptions for utility costs and the methodology or formula for calculating rents contained in the Council resolution. The Town shall provide the developer with an estimate of the initial rent for the BMR units at an earlier date upon written request.
2. **Rent Regulatory Agreement.** A rent regulatory agreement acceptable to the Town shall be recorded against the residential development prior to issuance of certificate of occupancy. Such an agreement shall reflect the limitations on rents required by this Chapter, the provisions of Subsection A, above, and the minimum requirements outlined below:
 - a. **Nondiscrimination.** When selecting tenants, the owners of BMR units shall follow all fair-housing laws, rules, regulations and guidelines. The owner shall apply the same rental terms and conditions to tenants of BMR 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.
 - b. **Move-in Costs.** Total deposits, including security deposits, required of households occupying a BMR unit shall be limited as mandated by state law applicable at the time of leasing or renting.
 - c. **Reporting Requirements.**
 - i. The owner (or their designated agent) shall be required to submit an annual report summarizing the occupancy of each BMR unit for the year, demonstrating the continuing eligibility of each tenant, and the rent charged for each BMR unit. The Town or its designee may

require additional information to confirm household income and rents charged for the unit if it determines necessary.

- ii. The Town or its designee shall maintain the right to periodically audit the information supplied to the Town for the annual report if deemed necessary to ensure compliance with this Chapter.
- d. The owners of any BMR unit shall agree to cooperate with any audit or reporting requirements conducted by the Town or its designee, State agencies, federal agencies, or their designees.
- e. Provisions concerning changes in tenant income, where, after moving into a unit a tenant's household income would exceed the specified limit for that unit. It is anticipated that these provisions would comply with the United States Department of Housing and Urban Development's requirements for annual income recertification.